S. HRG. 101-758

BAIL REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE IMPLEMENTATION OF THE BAIL REFORM ACT OF 1984 (PUBLIC LAW 98-473)

JUNE 16, 1989

Serial No. J-101-24

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

31-810 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S.521-51

COMMITTEE ON THE JUDICIARY

JOSEPH R. BIDEN, JR., Delaware, *Chairman*

EDWARD M. KENNEDY, Massachusetts
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois
HERBERT KOHL, Wisconsin

STROM THURMOND, South Carolina
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
CHARLES E. GRASSLEY, Iowa
ARLEN SPECTER, Pennsylvania
GORDON J. HUMPHREY, New Hampshire

MARK H. GITENSTEIN, *Chief Counsel*
DIANA HUFFMAN, *Staff Director*
JEFFREY J. PECK, *General Counsel*
TERRY L. WOOTEN, *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON THE CONSTITUTION

PAUL SIMON, Illinois, *Chairman*

HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
EDWARD M. KENNEDY, Massachusetts

ARLEN SPECTER, Pennsylvania
ORRIN G. HATCH, Utah

DEBORAH LEAVY, *Chief Counsel and Staff Director*
STEVE HILTON, *Minority Chief Counsel*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Simon, Hon. Paul, U.S. Senator from the State of Illinois, Chairman of the Subcommittee on the Constitution	1
Specter, Hon. Arlen, U.S. Senator from the State of Pennsylvania	1

CHRONOLOGICAL LIST OF WITNESSES

Panel consisting of Hon. Edward R. Becker, Judge, U.S. Court of Appeals for the Third Circuit, Philadelphia, PA; and Hon. Jon O. Newman, Judge, U.S. Court of Appeals for the Second Circuit, Hartford, CT	3
Anton R. Valukas, U.S. Attorney, Northern District of Illinois	147
Panel consisting of Arnold P. Jones, Director, Administration of Justice Issues, U.S. General Accounting Office; and David R. Reiser, Staff Attorney, Public Defender Service, Washington, DC	169

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Becker, Hon. Edward R.:	
Testimony	3
Prepared statement	10
Letter from J. Michael Quinlan, Director, Federal Bureau of Prisons, U.S. Department of Justice, June 6, 1989	65
Publication, "The Bail Reform Act of 1984," by Deidre Golash, Federal Judicial Center	66
Letter from David N. Adair, Jr., Assistant General Counsel, Administrative Office of the United States Courts, June 15, 1989	123
Jones, Arnold P.:	
Testimony	169
Prepared statement	172
Reprint of the Bail Reform Act of 1984, Public Law 98-473	179
Letter to Senator Paul Simon	215
Newman, Hon. Jon O.:	
Testimony	129
Prepared statement	132
Reiser, David A.:	
Testimony	191
Prepared statement	194
Valukas, Anton R.:	
Testimony	147
Prepared statement	155
Letter to Senator Paul Simon, July 11, 1989	168

APPENDIX

Additional Submissions for the Record

Submissions of Gerald P. Monks, Ph.D., CBA, executive director, Professional Bail Agents of the United States:	
Prepared statement	219
Legislative recommendations toward bail reform	227
Research paper, "Public Bail—A National Disaster?"	228
Article, "Why the Professional Bail Agent Has Superior Knowledge"	241
Reprint, "Study Links Bail Conditions to Prosecution"	242
Prepared statement of John A. Powell, legal director, on behalf of the American Civil Liberties Union, July 14, 1989	243

BAIL REFORM

FRIDAY, JUNE 16, 1989

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:37 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Also present: Senator Specter.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. The subcommittee will come to order.

This is a hearing on bail reform. We have not had a hearing on this subject since the 1984 act. This hearing is called specifically at the suggestion of my colleague, Senator Specter, and I applaud him for wanting to hold a hearing in this area.

We want to find out, first, what is happening with the implementation of the 1984 act. I have a concern, also, about those who are found guilty—either of serious drug trafficking offenses or violent crimes—and then post a bond and walk the streets and sometimes continue their activities while under appeal or while they are awaiting sentencing. That is one aspect of this whole question which I would like to see addressed.

Let me call on my colleague, Senator Specter.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I thank you for convening this hearing. I believe it is a very important subject because the statute on preventive detention makes a fundamental change in the law on incarcerating people before conviction without a showing that they will not appear for trial.

The traditional rules are, simply stated, that every person is presumed innocent until proved guilty, and therefore entitled to liberty between arrest and trial upon a posting of bail, which is designed to guarantee their appearance at trial, but not designed to keep them in custody to protect society.

The fundamental change was made with preventive detention which the Congress passed in the early 1980's after there had been a great deal of clamor for it for a very long period of time. I first saw the issue in 1969 with a very learned memorandum from the

Assistant Attorney General in charge of legal counseling, William Rehnquist, who then held that position. It was a masterful exposition of the need for preventive detention, which didn't convince me at the time.

But over the years, I have come to believe that there is an appropriate place, very carefully controlled, to keep somebody in detention between arrest and trial if there is a showing of a real threat to the community.

When the legislation was on the floor, I introduced an amendment to limit the time from 90 days to 60 days because I thought that a heavy burden should be placed on the prosecutor and law enforcement to move the case very promptly. If people were to be detained between arrest and conviction that the system, the prosecution, ought to move very, very fast. That amendment was defeated on the Senate floor and we put into effect a 90-day requirement, and it has been tested as to constitutionality and upheld, although the issue has never gotten to the Supreme Court of the United States.

On the issue which you raised, Mr. Chairman, about release after conviction, that is entirely different. Once somebody is convicted, the presumption of innocence is gone. Traditionally that has been a discretionary matter with the trial court, first, and then the appellate court.

I am reluctant to say that with the panel here today, since their knowledge of the law is much more current than mine and to know about issues I might not have heard about. Being circuit judges, they have the authority to change it. They may enter some disclaimer on their authority to change the law. I do think that there ought to be very tight requirements after conviction before someone is released.

And if I might just have a personal note, the Chairman and I were just talking to Judge Newman and Judge Becker and I said that they both brought major disabilities to this hearing; they are both close personal friends of mine.

Senator SIMON. And I agreed that was a major disability. [Laughter.]

Senator SPECTER. Judge Becker and I rode the elevator in 1950 when he was a freshman at the University of Pennsylvania and have been close friends ever since. Judge Newman and I started to play squash in 1953 when we were at the Yale Law School and have been close friends. However, I do not see him as frequently as I see Judge Becker, who is a Philadelphian. But these two men are, if not the best, among the very best of the Federal judicial system, which makes an extraordinary contribution to life in America. So, we are really privileged to have them here.

My recollection is that I first suggested this hearing after Judge Newman wrote an opinion on the subject and had some very close contact with the issue. And I know Judge Becker has dealt with the issue in an intimate way. So, we are fortunate to have their presence here to lend guidance to the Congress as to what, if anything, should be done in this important area.

Senator SIMON. I thank you, Senator Specter.

I am pleased to call on our witnesses. I might add that to the extent it is possible for witnesses to confine themselves to 5 min-

utes, that will be appreciated. One of the first witnesses, Judge Becker, indicated that may not be possible, and we understand, but brevity is still appreciated when possible by witnesses.

Let me call first on Judge Newman, or would you prefer Judge Becker first?

Judge NEWMAN. Yes.

Senator SIMON. OK.

PANEL CONSISTING OF HON. EDWARD R. BECKER, JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, PHILADELPHIA, PA; AND HON. JON O. NEWMAN, JUDGE, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, HARTFORD, CT

STATEMENT OF HON. EDWARD R. BECKER

Judge BECKER. Senator Simon, I think it would be preferable if I go first because I will give an overview.

Senator SIMON. OK.

Judge BECKER. For the record, I am Judge Edward Becker of the U.S. Court of Appeals for the Third Circuit. I have been a U.S. circuit judge for over 7 years. Prior to that, I was a U.S. district judge in Philadelphia for over 11 years.

But I appear here in an official capacity as chairman of the Judicial Conference of the United States Committee on Criminal Law and Probation Administration. The committee which I chair has oversight over and works in conjunction with the Probation Division of the Administrative Office of the United States Courts in administering the pretrial services agencies which have primary responsibility for supervising pretrial detainees.

I do not have a prepared statement. I apologize to the committee, but I received notice of this, I think, less than 2 weeks ago when I was just getting ready for a sitting. But I would ask the committee keep the record open because I not only will have a complete statement, but I have a lot of documentation, tables, statistics, exhibits that I think will be of considerable value to the committee.

Senator SIMON. We will keep the record open for that.

Judge BECKER. When I got into this, I had no idea how much was out there that will be of value to the committee. I thought that I had the obligation to help you as much as I could, and I canvassed the area, contacted other agencies and came up with some facts and figures. And I think I have been able to identify some legal problems with the statute which may need attention that will give much food for thought to the committee.

I will divide my presentation into two areas. I will speak primarily about pretrial detention, but I will also get into the other areas of the operation of the Bail Reform Act, including the area of bail pending appeal, which you mentioned, Senator Simon.

In terms of pretrial detention, I must say that I was astounded at the statistics. Approximately 30 percent of Federal defendants are detained pending trial, and somewhere between 20 and 25 percent of them are detained purely on grounds of pretrial detention, not for inability to make bail, but on the grounds of a finding of dangerousness or risk of flight or, more commonly, a combination of both.

One factor that I think that the committee needs to focus on is the initial 3-day period because under section 3142 of the statute, the Government has the right to get a continuance that may not exceed 3 days.

Under section 3142, there is no good cause or other qualification on that. At all events, in virtually every district, that is considered to be automatic, so that when the Government comes in and says we need 3 days, we want a continuance, the defendant is automatically detained for 3 days, and sometimes it is 4 and sometimes it is 5. If they come in on a Thursday, there is no hearing on a Sunday, and so forth.

Twenty-six percent of people who are arrested are detained for that reason alone. The Government comes in and says we want 3 days, and they are detained for that reason alone.

The numbers are very high. I contacted the Bureau of Prisons and the director, Michael Quinlan, wrote me last week that on June 6, 1989, there were 3,597 pretrial detainees in Bureau of Prisons facilities. Now, that is Federal correctional facilities. Most of them are in the custody of the U.S. marshal, who places them, pursuant to contract, in local jails.

The annual report of the U.S. Marshals Service reported—and they don't break this down into detainees and other people and I am trying to get those figures, but it is reasonable to believe that most of the people that they have in custody are pretrial detainees in local jails.

Their annual report said that the average daily number of prisoners in U.S. Marshals Service custody was 8,857 in fiscal year 1988, an increase of 22 percent. A half hour ago we called, and that figure is up from 8,857 to 12,055, and I believe that most of these are pretrial detainees.

The situation is such, Senators, that in Philadelphia pretrial detainees are housed in Otisville, New York. In the District of Rhode Island, pretrial detainees are housed in Otisville, New York. There is no room in the local jails. So somebody who is subject to pretrial detention because the marshal has—and this, in the words of General Counsel Auerbach of the Marshals Service, to whom I spoke 2 days ago, the jail situation is desperate. The Marshals Service is housing people hundreds of miles away. They have to be transported back and forth.

The annual report of the Marshals Service, which I will submit, talks about the situation in Missouri where the marshals have to get up at 5:00 a.m. That is a day trip, not necessarily an overnight trip. Well, I guess even Otisville is a day trip; it takes 3 to 4 hours to get the people in.

One point that I want to make to the committee is that there is very close relationship between jail overcrowding and pretrial detention. I do not make that as a normative judgment. I don't come here to make normative judgments because my committee has not taken a position on these things. But in terms of the cost of pretrial detention, there is a close relationship to the jail overcrowding situation.

At all events, a lot more people have been detained, frankly, than I realized according to these figures. The cost is significant, by the way. The cost of detention in Federal correctional facilities is

$30.31 per day, and that is $11,000 per year. And you may say, a year? And there are examples of people who have been detained for a year.

One of the things I do want to mention, because it has significant possibilities, is the use of home detention, with or without electronic surveillance, and the cost of that is a fraction of what the cost is of detaining somebody. Of course, that requires staff and it requires supervision, and so forth. The Probation Service, which we oversee, could do more of that if we had an appropriation which would enable us to do more of it.

I must say that the figures that I have given you remind me of—I forget who the entertainer was who said you ain't heard nothing yet. The report that I submitted on behalf of my committee and the Judicial Conference to the Congress on the impact of drug-related criminal activity on the Federal judiciary set forth the following ominous statistics, and it is largely related to drug cases.

In the 1980's, while total case filings in the U.S. district courts rose 42 percent, criminal case filings rose 56 percent. Drug-related criminal cases increased by 229 percent, and it is exponential because drug-related criminal cases are multidefendant cases. They take longer to try; you need for jurors, and so forth.

We project that the filings will go up, up, up; that the number of additional drug case filings will range from a minimum of 2,100 cases with 4,000 defendants, to a maximum of 5,300 cases with 9,900 defendants.

I submitted this report prior to the President's message to the Congress in which he asked for 1,600—I have here $50 million for 1,600 additional U.S. attorneys. Now, U.S. attorneys are there to bring cases, and the burden on the Federal judiciary will absolutely be staggering.

I don't know whether the Congress has focused sufficiently on the needs of the judiciary to meet this caseload. But in terms of the focus of this hearing, because of the statutory presumption in favor of detention in the case of drug cases, the number of pretrial detainees is going to go significantly higher. The jail problem is going to go significantly higher, and it is something that I think the Congress needs to be concerned about.

Now, the burden is not only on the jails; the burden is on the courts. We have pretrial service agencies which presently have 523 officers, costing roughly $25 million. I will give you some statistics which will show that we presently have a 25-percent shortfall.

We supervise these people who are on pretrial release. Obviously, if they are in detention, we don't supervise them unless they are on home detention. But the ones who are on release, we supervise.

Pursuant to the 1988 Anti-Drug Abuse Act, there are eight pilot districts where we take urines from all of these people, and I can report that from the eight pilot districts we have taken about 800 urines. You will be interested in knowing that they have shown about 39 percent positive, on average. I just got those figures this morning and we will have a full report to the Congress.

But the point is that this takes a great deal of pretrial service time. We need more help. It takes a great deal of magistrates' time. The average detention hearing takes a couple of hours, and there are all kinds of ways of dealing with this, but they all cost money.

Now, let me turn quickly to legal problems that have arisen in terms of the statute. I mentioned the 3-day requirement. I have called around the country and have had mixed reports on this.

I can tell you, however, that I met with four or five magistrates in Philadelphia—four of the five Philadelphia magistrates. And the Philadelphia magistrates—and I don't think this is widespread nationwide, but they at least complained that the 3-day period appears, whether intentionally or not, to be used for leverage because what happens is the defendant is detained for 3 days automatically on request of the U.S. attorney, and then all of a sudden the U.S. attorney withdraws the request for detention because the defendant has either pleaded or cooperated. They are at least concerned that there is some leverage applicable there.

In other districts, it has been reported to me that the Justice Department sends the young, inexperienced U.S. attorneys in, and so defensively, reflexively, they automatically request the 3 days.

In other areas of the country, it is much more discriminating and they feel that the U.S. attorney is much more receptive to what, after all, I think was the goal of the Congress when it passed the Pre-Trial Detention Act, to have controlled release with a mix of conditions that will assure the safety of the community and assure that the defendant will not plead.

But at the very least, it is reported to me that throughout the country, the 3 days are given automatically. The U.S. attorney asks for it, the magistrate gives it, and people are detained for 3 or 4 or 5 days, with varying consequences.

I am not pointing a finger at anybody. I am simply reporting anecdotally what I have heard. This may be something that the committee may wish to study further.

Additionally, the magistrates have complained that, although the statute makes clear that the rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing, some of the magistrates complain that it is not hearsay; it is double, it is triple, it is quadruple hearsay. And they have suggested that perhaps the Congress might consider imposing a reliability requirement.

This is something that we now have under the Sentencing Reform Act because the rules of evidence don't apply in sentencing hearings. But by and large, courts, following Judge Newman's circuit's *Fatico* decision, are applying a reliability requirement. I simply raise the question.

I will submit two documents to the committee. One is a publication of the Federal Judicial Center entitled "The Bail Reform Act of 1984," written by Dierdre Golash, which has a complete survey and identifies areas in which legal problems have arisen, areas in which there are circuit splits.

Now, I asked David Adair, who is here this morning, who is assistant general counsel of the Administrative Office of the U.S. Courts, to update it, and I will submit to the committee with my formal submission a memorandum from Mr. Adair entitled "Bail Reform Act of 1984: Legal Issues for Congressional Consideration."

There are a number of very significant issues for legal consideration. I will not mention the two that I know that Judge Newman will address in terms of the standard for detention and the length

of detention, but let me just very quickly mention a few of these. These are spelled out in the memo.

There is a very significant split in the circuits regarding the standard of review applied to appeals of release and detention orders; that is, most of the circuits apply de novo review because of the seriousness, as Senator Specter said earlier, of what is involved here. We look it at as though we were the district judge. However, in the Fifth Circuit and the First Circuit, there is deferential review to the district court. That is a matter of some not inconsiderable significance.

I might also add that—and I will identify a couple of other areas where there are circuit splits or legal problems. These are not issues that are likely to get to the U.S. Supreme Court for resolution simply because they are pretrial matters and there is rarely time.

I mentioned the potential problem with the 3-day requirement. The circuits are split as to whether the provisions of the Federal Rule of Criminal Procedure 45(a), which excludes weekends and holidays from computation of time limits, applies in the case of the continuance that I mentioned under section 3142(f).

That can be a big difference to somebody if you include Saturday or Sunday or you don't include Saturday and Sunday, and the Second Circuit has gone one way, the 11th Circuit has gone the other way.

There is some problem with respect to the sua sponte—that is, the continuance of hearings on the motion of the judicial officer without an application from anyone else. That is not entirely clear in the law.

I won't belabor this further, but this memo and Ms. Golash's monograph identify the problem areas in terms of the act that are correctable by Congress. It may be that circuit splits are not bad, as such, but it seems to me that this is an area where we need to be more concerned about it than in other areas.

Now, I mentioned home detention. It is very useful in this area. The law, generally speaking, is that nobody gets jail credit if they are detained outside of a correctional institution. Focusing again on the enormous cost of prisons, to the extent that our pilot projects, which are underway in cooperation with the Pearl Commission and the Bureau of Prisons, bear fruit and home detention is seen as a greater vehicle for keeping people out of the prisons, consideration might be given to whether or not some jail credit should be given for home detention.

We have evidence which indicates that it is considered punitive. Indeed, the Sentencing Commission just amended its guidelines in recognition of evidence that was submitted to them that home detention, with electronic surveillance with a bracelet, is considered by the defendant to be more punitive than a halfway house confinement. So, this is another area that it seems to me needs to be looked into.

I keep coming back to the prison overcrowding, but I must say, Senator, that with the proliferation of mandatory minimum sentences and the increase in prosecutorial manpower and the consequent increase in drug arrests, the Federal courts within the next couple of years are going to be faced with an explosion. It may be

very difficult for us to handle and, concomitantly, the Federal prisons are going to be in very, very serious trouble.

Now, additionally, on the subject of bail pending appeal, there is a circuit split in the law governing bail pending appeal, and that relates to the question of the likelihood of—the statute provides in 3143 that a convicted defendant does not get the benefit of a presumption, but nonetheless may be admitted to bail pending appeal so long as there is evidence that the person is not dangerous.

Here it is, 3143:

> If the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of the community, and that the appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

Most of the circuits say that so long as there is a close question of law—if it is a close question of law, that is sufficient to satisfy the standard of "substantial question of law." Others of the circuits say if it is fairly debatable, that is enough.

Now, there is a difference. I think it is more than a nuance between close question and fairly debatable. The "fairly debatable" standard is a more lenient standard which would lead to more people getting bail pending appeal.

I thought that it would be useful to tell the committee what the reversal rate is because anyone who is convicted and denied bail pending appeal whose conviction is reversed by the court of appeals never should have been in jail in the first place, much less in jail pending appeal.

The average runs around 300. In 1988, it was 297 people whose convictions were reversed. I don't know how many of them——

Senator SIMON. Out of how many?

Judge Becker. It is a relatively small percentage. I will get you the percentage, Senator Simon. It is about 300—well, it is 300 people. It is a relatively small percentage. But you look at it, A, in terms of their rights; second, you look at it in terms of the jail overcrowding.

I talked to Mike Quinlan, the Director of the Bureau of Prisons. He said, well, these are people, you know, that we never should have had. Well, you can't identify them necessarily, and I do keep coming back to the question of jail overcrowding, but there it is.

In terms of an overview of how the statute is working, in terms of the intention of the Congress to see to it that people are not kept in jail because they couldn't afford bail, I must say that, for instance, the Congress said in 3142 at the tail end, the last paragraph of (c), "The judicial officer may not impose a financial condition that results in the pretrial detention of the person."

I must say that that facet of the statute, we think, has been working well. Many people are released on their own recognizance. The conditions we—I don't think that we could improve on the conditions that are set forth in 3142(c). There are a variety of conditions that the pretrial service agencies, in conjunction with the courts, have been fashioning—creative conditions which by and large have preserved the safety of the community and seen to it that people do show up.

So, they are an excellent group of conditions and, by and large, people are not being held in jail in the Federal system because

they can't afford it. These various conditions have enabled the courts to fashion conditions of release which assure their appearance and assure the safety of the community.

So, to that extent, we think that the statute has been working quite well. The increase, of course, has been in the detainees and, as I have stated, the figures were surprising to me. I did not realize that that many people were being detained pretrial.

I probably have raised more questions than I have given you answers, and perhaps, Senator Simon, that is because it has been so long since there has been an oversight hearing on this.

I have been a member of the committee that has overseen pretrial services for almost 10 years. I have been chairman for 1½ years, and we have really not had any significant agenda items concerning the Bail Reform Act. We have had a lot of problems with pretrial services. We are working very hard on upgrading the pretrial services agencies, getting them to do the job better and better and better.

But I think that these hearings are very useful not only in terms of the Congress focusing on the subject, but in terms of making us focus on the subject. As a committee chairman and as an appellate judge who is not in this every day, it has been a revelation to me.

And I want to assure the committee that we will be studying this further. We will be glad to cooperate with you, get back to you with these statistics. Within a very short period of time, I will get you a statement with all of these various exhibits that I have referred to, and would be very pleased to answer any inquiries or questions that you may have with respect to the operation of the Bail Reform Act. I thank you for giving me additional time.

Senator SIMON. Thank you very much for your testimony, which really is helpful. And let me add, if your committee has specific recommendations as a result of your study, we would be very eager to have those specific recommendations.

[Judge Becker submitted the following prepared statement along with additional information:]

SUMMARY OF TESTIMONY
OF JUDGE EDWARD R. BECKER
TO THE
SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
CONCERNING THE BAIL REFORM ACT OF 1984 (OVERSIGHT HEARING)
JUNE 16, 1989

I. INTRODUCTION

Judge Becker has been a Judge of the United States Court of Appeals for the Third Circuit since January 1982. Prior to that he was a Judge of the United States District Court for the Eastern District of Pennsylvania (since December 1970). He appears in his official capacity as Chairman of the Judicial Conference of the United States Committee on Criminal Law and Probation Administration.

II. PRETRIAL DETENTION, 18 U.S.C. §§ 3142.

A. A substantial and increasing number of defendants in federal criminal cases are detained pretrial. The attached and detailed statistical tables, prepared by the Probation and Statistical Analysis and Reports Divisions of the Administrative Office of United States Courts, demonstrate this fact in replete detail. It appears that overall approximately 29% of all federal defendants remain incarcerated until their trial (See Table 1). Approximately 12,000 defendants per year remain so detained. The vast bulk of these (about 80%) are detained for reasons of risks of flight or danger to the community (and not inability to raise financial bail). Of the defendants who are given detention hearings on motion of either the government or the court (As reflected in Table 2(a), 90.4% of the hearings are triggered by the request of the government), 73% are ordered detained (See Table 2(b)). Of these, 47% are detained for risk of flight only, 14% for risk of danger only, and 39% for both risk of flight and danger (See Table 2(c)).

B. The high number of pretrial detainees has placed an enormous burden on both the U.S. Marshal's Service and the U.S. Bureau of Prisons. According to information received from Gerald Auerbach, General Counsel of the U.S. Marshals Service, on the date of this hearing the U.S. Marshal's Service had an average daily census of 12,055 prisoners in tow, up by one-third from 1988. The vast bulk of these are pretrial detainees. The local jail space shortage is so desperate that, for example, pretrial detainees from Philadelphia, Pennsylvania and Providence, Rhode Island have had to be housed at the FCI in Otisville, New York, and some defendants in Los Angeles area have had to be housed in the San Francisco area. This situation is causing exorbitant transportation costs, and also makes it extremely difficult for counsel for the defendants to prepare for trial, and imposes hardship upon families. Moreover, the U.S. Bureau of Prisons presently is holding roughly 3,600 pretrial detainees in its facilities on an average day. See attached letter from J. Michael Quinlan, Director, U.S. Bureau of Prisons. The cost of confinement in those facilities exceeds $11,000 per year per defendant.

It is plain that jail overcrowding in the nation is seriously effected by pretrial detention. It is also plain that this problem will worsen as the impact of drug-related activity on the federal courts continues unabated because: (1) the majority of pretrial detainees are drug case defendants; and (2) as the attached copy of the report on that subject recently submitted by the Judicial Conference to the Congress shows, there has been and continues to be an enormous increase in the volume of drug cases in federal court.* The increase in federal court

---

*. During the 1980's drug-related criminal cases have increased by 229 %. Drug-related offenses now account for about 24% of the criminal case filings of the district courts and 44% of all criminal trials. It is projected that the number of additional drug case filings in the United States district courts in the next few years will range from a minimum of 2,100 cases with 4,000 defendants to a maximum of 5,300 cases with 9,900 defendants. This estimate was made before the President's recent Anti-Crime Package, requesting additonal Assistant U.S. Attorneys, see text infra, was submitted.

drug caseload projected in the report will be further increased if the Congress responds favorably to the President's recent Anti-Crime Package by appropriating funds to employ 800 to 1600 additional Assistant U.S. Attorneys.

C. It is also clear that the length of detention is significant. For the twelve-month period ending December 31, 1988, 40% (2,061 defendants) were detained between 91 and 180 days and 21% (1,068 defendants) were detained six months or more (See Table 3).

D. Pretrial services officers (and probation officers where there is not a separate pretrial services office) spend a considerable amount of time in preparation for a detention hearing, ranging from between one and two hours in the Southern District of New York (New York City) and the Western District of Texas (El Paso, San Antonio) and three to four hours in the Southern District of Florida (Miami), the Central District of California (Los Angeles) and the Eastern District of Pennsylvania (Philadelphia). The hearing are often quite time consuming, and United States Magistrates report that a great deal of judicial time is spent thereon.

The cost of pretrial detention to the Courts is great. The bulk of the work in that regard is performed by pretrial services agencies. Although these agencies presently have a staff of 523 (and a budget of $25,000,000), under the present workload measurement formula, there is a staff shortfall of 255.

E. By and large pretrial detention hearings are held promptly. One problem is that, as § 3142(f) of the Act has been universally interpreted, the government is entitled to an automatic three-day continuance after the initial appearance (at which the detention request is made) to present its case, and often, when the third day falls on a Saturday, Sunday, or holiday, due to the interplay of Fed. R. Crim. P. 45(a) (which excludes weekends and holidays from computation of time limits) the three days often extends to four or five.

F. The Courts are carefully complying with the pretrial detention provisions of the Bail Reform Act. As is indicated above, extended hearings are held before the U.S. Magistrates. Moreover, the parties have the right to de novo review before the district court as well, and district judges also report spending considerable time on the hearings. There is also a right of appeal and, although the circuits are split on the point, see infra, in most circuits review is plenary, so that the defendant (and the government*) gets three de novo reviews of the facts to determine whether detention is warranted. The courts are in all circumstances, prior to ordering a defendant detained, making the requisite findings of risk of flight or of danger to the community as well as that no restrictive conditions will reasonably assure the appearance of the person and the safety of the community. 18 U.S.C. § 3142.

Moreover, the pretrial service units of the courts have been both assiduous and creative in fashioning conditions of release that will avoid detention (See Table H-5). One of the conditions of release that has been increasingly used is home detention with (and sometimes without) electronic surveillance. Thus care is being taken to assure that the rights of defendants are protected under the statute.

III. OTHER PROVISIONS OF THE BAIL REFORM ACT

A. Release Without Bail On Conditions

Perhaps the most effective aspect of the Bail Reform Act is its success in reducing the number of defendants who are detained because of inability to post bail. In 1984, financial bail was set in 43% of the cases. In 1988 financial bail was set in only 14% of the cases (See Table 4).

---

*. Sometimes the government will prevail on appeal and obtain detention even though the defendant was released on conditions in the district court.

IV. LEGAL QUESTIONS ARISING UNDER THE ACT

A number of legal problems have arisen in interpretation of the Act. They are described in the attached Federal Judicial Center Monograph by Deirdre Golash entitled The Bail Reform Act of 1984 and in the attached memorandum from David Adair, Assistant General Counsel of the Administrative Office of the United States Courts, which updates the Federal Judicial Center Monograph. Mr. Adair's memorandum in particular identifies points on which the circuits are divided.

In particular, consideration might be given to legislation in the following areas described in Mr. Adair's memorandum:

Sua sponte Continuances of Detention Hearings (page 1)

Computation of Continuance Period (page 3)

Standard for Release Pending Appeal (page 6)

Standard of Review of Release or Detention Orders (page 7)

I take no position on the matters discussed by Judge Newman at this hearing: whether there should be a limit on the length of detention or whether the legal standard for detention should be raised. The full Committee was unable to take up suggestions for revision of the Bail Reform Act prior to the hearing because of the shortage of time, the Committee will be pleased to do so in the future.

V. ACQUITTAL RATE IN CASES WHERE DEFENDANTS WERE DETAINED PRETRIAL AND REVERSAL RATE ON APPEAL

The Committee requested that we furnish statistics concerning the acquittal and dismissal rate in cases where defendants were detained pretrial and concerning the reversal rate on appeal. The following information was supplied by the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts:

A. Acquittal and Dismissal Rate for Pretrial Detainees

For the twelve-month period ending December 31, 1988, 10.3% of the cases of defendants in pretrial detention were

dismissed and in 2.2% of the cases defendants were acquitted, for a total of 12.5%. Eighty-five percent of defendants in pretrial detention were convicted, although 1.2% of those received no sentence of incarceration (but only fines) (See Table 15).

B. Appellate Reversal Rate

Year	Reversals	Percentage
1986	311	8.8%
1987	260	7.9%
1988	297	8.5%

DESCRIPTION OF TABLES

Reference is made in the summary text to Tables 1 through 4. Tables 5 through 9 reflect additional data not described in the summary. Also attached but not described in the summary are a series of tables and demographic profiles.

1. **INCARCERATION PENDING TRIAL**

   A comparison of detention data from the 12-month period preceding passage of the Bail Reform Act of 1984 with the 12-month period ending September 30, 1984 in 8 judicial districts.

2. **DETENTION HEARING DATA**

   Three tables reflecting motions for detention hearings, the number of defendants detained, and the reasons for detention.

3. **DAYS DETAINED**

   Reflects data from 26,123 closed cases for the year 1988 regarding the number of days detained.

4. **USE OF FINANCIAL BAIL**

   A comparison of 1984 data with 1988 data regarding the use of financial conditions of pretrial release.

5. **RELEASE AT INITIAL APPEARANCE (Nationally)**

   A comparison of five 12-month periods.

6. **RELEASE AT INITIAL APPEARANCE IN THE ORIGINAL PRETRIAL SERVICES PILOT DISTRICTS**

   A comparison of data from 1984 with data from 1988 in ten well-established pretrial services offices.

7. **TYPES OF DETENTION**

   A look at the 12-month period ending December 31, 1988 for the types of detention imposed at the initial appearances.

8. **SUPERVISION**

   A comparison of calendar years 1984 and 1988 showing an increase in the frequency with which defendants are placed under the supervision of pretrial services officers.

9. **MAGISTRATE STATISTICS**

   Data reported by U.S. magistrates to the Administrative Office concerning the number of initial appearances, detention hearings, and bail reviews during the 12-month period ending June 30, 1988.

TABLE 1

INCARCERATION PENDING TRIAL

Following passage of the Pretrial Services Act of 1982 the program was expanded from the original pretrial services demonstration districts to each judicial district (other than the District of Columbia). Data reported by pretrial services officers regarding detention is limited prior to implementation of the Bail Reform Act of 1984 due to the phasing-in of pretrial services during this period. The districts reflected in this table were part of the demonstration program begun in 1976 and so permit a "before/after" view of the impact of the Bail Reform Act of 1984.

The table reflects the 12-month period immediately preceding the effective date of the Bail Reform Act (October 1, 1983 to September 30, 1984) and the 12-month period ending September 30, 1988. The rate at which defendants are detained from arrest through deposition increased from 22 percent to 29 percent.

"NEVER RELEASED" RATES IN EIGHT PRETRIAL SERVICES DISTRICTS

	1984			1988		
	Closed Cases	Never Released	Percentage	Closed Cases	Never Released	Percentage
PA/E	246	34	14	542	106	20
MD	608	133	22	473	93	20
GA/N	237	53	22	330	121	37
MI/E	770	73	9	1,010	172	17
IL/N	603	90	15	563	138	25
TX/N	383	92	24	594	200	34
MO/W	264	47	18	401	134	33
CA/C	972	393	40	1,386	586	42
Totals	4,083	915	22%	5,299	1,550	29%

DETENTION HEARING DATA

TABLES 2(a), 2(b), and 2(c)

During the twelve months ending December 31, 1988, the U.S. attorney made 10,678 (90 percent) of the 11,803 motions for pretrial detention. Judicial officers held detention hearings on their own motions in 1,125 (9 percent) cases. **(See Table 2(a))**

During the same time period, a total of 38,461 pretrial services cases were opened, and a total of 11,800 (31 percent) involved detention hearings.

Of the 11,800 defendants who had detention hearings, a total of 8,643 (73 percent) were ordered detained pursuant to 18 U.S.C. § 3142(e), and 3,157 (27 percent) were released. **(See Table 2(b))**

During the twelve months ending December 31, 1988, a total of 8,643 defendants were ordered detained. In 4,095 (47 percent) cases, the court cited "risk of flight" as the reason; in 1,082 (13 percent) cases, the risks of danger to society or to a particular individual were cited; in 3,329 (39 percent) cases, the court cited a combination of flight risk and danger. **(See Table 2(c))**

12-Months ending 12-31-88

TABLE 2(a)

MOTIONS FOR DETENTION

By Court	1,125	(9.6%)
By Government	10,678	(90.4%)
Total Motions	11,803	

TABLE 2(b)

DETENTION HEARINGS

PSA Cases Activated	Defendants with Detention Hearings	Defendants Ordered Detained
38,461	11,800 (31%)	8,643 (73%)

TABLE 2(c)

REASONS FOR DETENTION

Defendants Ordered Detained	Risk of Flight Only	Risk of Danger Only	Both Risk of Flight and Danger
8,643	4,095 (47%)	1,219 (14%)	3,329 (39%)

TABLE 3

The table below is taken from closed cases for the 12-month period ending December 31, 1988. Of the 5,170 detained defendants, whose cases have been closed and coded statistically, a total of 2,026 (39 percent) were detained for a period not exceeding 90 days. Another 2,061 (40 percent were detained between 91 and 180 days, and 1,067 (21 percent) were detained six months or more.

DAYS DETAINED

Total Cases Closed	Total Defendants Detained	1-90 Days	91-180 Days	Over 180 Days
25,742*	5,170	2,026 (39%)	2,061 (40%)	1,067 (21%)

*Represents 67 percent of the 38,461 cases opened in 1988.

TABLE 4

USE OF FINANCIAL BAIL

A comparison of calendar years 1984 and 1988 reveals that the overall use of financial conditions has declined. In 1984, a total of 8,345 (43 percent) cash or corporate surety bonds were set. In 1988, a total of 7,238 (19 percent) were set.

However, the use of real property as collateral to secure a bond has increased from 617 (3 percent) cases in 1984 to 2,273 (6 percent) in 1988.

	1984	1988
Cash or Corporate Surety	8,345 (43%) of 19,417 closed cases	7,238 (19%) of 38,461 opened cases

USE OF PROPERTY AS COLLATERAL

	1984	1988
Use of Property	617 (3%) of 19,417 closed cases	2,273 (6%) of 38,461 opened cases

TABLE 5

RELEASE AT INITIAL APPEARANCE (NATIONAL)

The figures below reflect the overall rates at which defendants are released at the initial appearance. While the percentages at the far right do not appear to have changed significantly since 1984, we believe that this may be misleading. Implementation of pretrial services increased from 63.7 percent to 80.7 percent during this period. In 1984, many districts conducted pretrial services investigations only if detention was likely or after a defendant had already been detained. At an increasing rate since that time, these districts are attempting to provide pretrial services reports in all cases, as required by statute. The "release rate" in such districts would therefore increase as the district approaches 100 percent compliance with the statute. This would tend to upwardly skew the national release rate. (See Table 2 for a comparison with 10 well established pretrial services districts where the release rate has declined).

12-Month Period Ending	Pretrial Svcs. Filings	Cases Opened	Released at IA
3/89	49,473	39,940 (80.7%)	19,925 (50%)
12/88	50,217	38,461 (76.6%)	19,374 (50%)
12/87	48,569	30,696 (63.2%)	16,490 (54%)
12/86	47,330	30,679 (64.8%)	16,543 (54%)
12/85	44,144	28,892 (65.4%)	15,766 (55%)
Bail Reform Act of 1984 Effective Date 10/12/84			
12/84	42,179	26,866 (63.7%)	14,376 (54%)

TABLE 6

RELEASE AT INITIAL APPEARANCE IN THE ORIGINAL PILOT DISTRICTS

In the ten original pretrial services pilot districts, which were established in 1976, the rate at which defendants obtain their release at the initial appearance declined from 62.7 percent to 54.4 percent following implementation of the Bail Reform Act of 1984.

	1984			1988		
	Cases Opened	Released at Initial Appearance	Percentage	Cases Opened	Released at Initial Appearance	Percentage
NY/S	1,673	1,000	59.8	1,597	855	53.5
NY/E	1,093	657	60.1	1,307	567	43.4
PA/E	615	463	75.3	758	440	58.0
MD	1,051	788	75.0	923	516	55.9
GA/N	380	211	55.5	607	343	56.5
MI/E	1,044	844	80.8	1,195	894	74.8
IL/N	863	668	77.4	800	480	60.0
TX/N	607	316	52.1	762	336	44.1
MO/W	356	226	63.5	470	286	60.9
CA/C	1,850	808	43.7	2,065	987	47.8
Total for 10 Pilot Districts	9,532[1]	5,981	62.7	10,484	5,704	54.4
Nat'l.	26,866[2]	14,376	53.5	38,461	19,374	50.4

[1]This represents 98.4 percent of the 9,688 filings in the 10 pilots in 1984.

[2]This represents 63.7 percent of the 42,179 filings nationally in 1984.

TABLE 7

TYPES OF DETENTION AT INITIAL APPEARANCE

Twelve Months Ending
December 31, 1988

1	2	3	4	5	6	7
Pretrial Services Cases Activated	Released at Initial Appearance	Detained on Money Bail	Temporary Detention (Up to 10 days)	3-Day Hold for D.H.	D.H. Same Date	Other
38,461	19,374 (50%)	3,792 (10%)	1,480 (4%)	9,676 (25%)	2,228 (6%)	1,911 (5%)

1. During the 12-month period ending December 31, 1988, a total of 38,461 (77%) pretrial services cases were opened out of the 50,217 criminal defendants filed. These 38,461 cases comprise the data base for this table.

2. "Released at initial appearance" includes all defendants who were released on a bail set at the initial appearance, even if the defendant was detained for a day or two attempting to raise money.

3. "Detained on money bail" includes defendants who were unable to raise the initial bail and required a bail review.

4. "Temporary detention" includes defendants held pursuant to 18 U.S.C. § 3142(d), for a period of up to ten days.

5. "Three-day hold" includes all defendants for whom the government made a motion for a detention hearing and requested a continuance pursuant to § 3142(f)(2).

6. "Detention hearing same date" includes defendants who had a detention hearing on the same date as their initial appearance.

7. "Other" includes miscellaneous cases which do not fit the other categories.

TABLE 8

SUPERVISION

A comparison of calendar years 1984 and 1988 reveals that the rates at which defendants are placed under pretrial services supervision has risen from 34 percent to 40 percent.

	12/84 (H-4) Table)	12/88 (H-6 Table)
Data Base	26,866	38,345
Released to Supervision	9,057 (34%)	15,414 (40%)

TABLE 9

MAGISTRATE STATISTICS

The following chart reflects data extrapolated from reports by U.S. magistrates to the Magistrate Division for the twelve-month period ending June 1988. The magistrates reported a grand total of 11,802 detention hearings and 6,646 bail review hearings. During the same twelve-month period, pretrial services reported a total of 10,256 detention hearings (figures for bail review hearings are not yet available).

District Totals

Circuit and District	Initial Appearances	Det. Hearings	Bail Reviews
Total			
000 District of Columbia			
First Circuit			
100 Maine	92	7	11
101 Massachusetts	439	126	64
102 New Hampshire	32	15	0
103 Rhode Island	73	39	8
104 Puerto Rico	1048	413	229
Second Circuit			
105 Connecticut	230	85	93
106 New York, N	272	84	31
107 E	1395	582	119
108 S	1694	615	136
109 W	174	4	1
110 Vermont	103	25	6
Third Circuit			
111 Delaware	48	14	0
112 New Jersey	643	82	43
113 Pennsylvania E	669	193	45
114 M	168	28	10
115 W	270	61	22
116 Virgin Islands	414	46	252
Fourth Circuit			
117 Maryland	667	207	87
118 North Carolina E	410	94	23
119 M	307	117	47
120 W	334	99	9
121 South Carolina	256	82	55
122 Virginia E	690	162	23
123 W	158	19	11
124 West Virginia N	86	35	0
125 S	110	49	11
Fifth Circuit			
126 Louisiana E	819	292	92
127 M	90	11	2
128 W	191	43	105
129 Mississippi N	118	7	14
130 S	157	30	34
131 Texas N	1059	306	93
132 E	214	90	23
133 S	3747	475	401
134 W	2086	195	427
135 Canal Zone			
Sixth Circuit			
136 Kentucky E	87	89	74
137 W	191	90	9
138 Michigan E	1085	155	33
139 W	114	40	17
140 Ohio N	277	84	49
141 S	418	141	25
142 Tennessee E	167	25	7
143 M	384	75	5
144 W	552	68	31

Circuit and District	IA's	DH's	BP's
Seventh Circuit			
145 Illinois N	738	252	42
146 C	95	37	10
147 S	127	43	8
148 Indiana N	377	60	17
149 S	305	136	17
150 Wisconsin E	263	83	26
151 W	154	61	0
Eighth Circuit			
152 Arkansas E	135	15	8
153 W	33	7	25
154 Iowa N	33	17	1
155 S	67	18	21
156 Minnesota	422	141	28
157 Missouri E	490	78	57
158 W	625	157	34
159 Nebraska			
160 North Dakota	95	68	47
161 South Dakota	276	114	4
Ninth Circuit			
162 Alaska	89	72	56
163 Arizona	1458	336	460
164 California N	1739	370	372
165 E	774	525	118
166 C	2057	480	117
167 S	3491	170	629
168 Hawaii	111	44	12
169 Idaho	104	47	0
170 Montana	121	7	13
171 Nevada	512	161	82
172 Oregon	356	222	8
173 Washington E	187	99	29
174 W	574	180	107
175 Guam			
176 No. Mariana Is			
Tenth Circuit			
177 Colorado	579	149	62
178 Kansas	406	55	33
179 New Mexico	809	270	58
180 Oklahoma N	220	40	22
181 E	31	13	2
182 W	185	57	35
183 Utah	204	152	52
184 Wyoming	117	10	3
Eleventh Circuit			
185 Alabama N	169	23	6
186 M	186	11	10
187 S	197	57	10
188 Florida N	333	115	8
189 M	1190	436	111
190 S	3303	673	988
191 Georgia N	638	158	89
192 M	233	30	0
193 S	182	52	31
GRAND TOTALS	47,324	11,802	6,646

H-TABLES

TABLE H-1
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
CASES ACTIVATED
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	CRIMINAL DEFENDANTS FILED1	PSA CASES ACTIVATED2	TYPE OF CASE					RULE 40 TRANSFERS OUT	PRETRIAL DIVERSION		
			COMPLAINTS	INDICT/INFOR	SUPERCEDING	MATERIAL WITNESS	OTHER		CASES ACTIVATED	PRE CHARGED PTD3	POST CHARGED PTD4
TOTAL	50,217	38,461	20,183	17,220	233	469	356	3,295	2,201	1,910	291
1ST	1,586	1,456	745	601	46	46	20	107	100	90	10
ME	141	138	70	65	0	0	3	14	8	8	0
MA	566	482	185	282	0	4	1	40	70	65	5
NH	76	76	15	56	0	0	7	12	4	4	0
RI	123	10	5	5	0	0	0	2	3	3	0
PR	682	750	470	183	46	42	9	39	15	10	5
2ND	3,973	3,463	2,982	480	0	10	11	215	32	31	1
CT	317	151	89	56	0	1	5	14	6	6	0
NY N	322	34	28	6	0	0	0	0	0	0	0
NY E	1,297	1,307	1,186	118	0	3	0	103	0	0	0
NY S	1,546	1,597	1,444	144	0	6	3	80	11	10	1
NY W	351	231	130	104	0	0	3	18	6	6	0
VT	140	137	85	52	0	0	0	2	9	9	0
3RD	2,712	2,599	1,312	1,249	0	10	27	186	291	235	56
DE	115	93	36	57	0	0	0	1	5	4	1
NJ	763	744	457	263	0	9	15	111	174	144	30
PA E	844	791	267	467	0	0	4	36	4	4	0
PA M	291	291	27	136	0	0	1	7	28	26	2
PA W	356	81	165	284	0	1	0	30	80	57	23
VI	384	369	340	27	0	0	1	1	0	0	0
4TH	5,328	2,624	992	1,586	11	4	15	185	245	218	27
MD	714	714	534	176	6	3	2	62	52	45	7
NC E	619	275	74	199	1	1	3	32	53	51	2
NC M	291	291	55	157	0	0	0	14	12	6	6
NC W	585	522	170	350	0	0	2	32	19	13	6
SC	682	148	57	88	0	0	1	30	60	57	3
VA E	1,435	0	0	0	0	0	0	0	10	10	0
VA W	239	149	45	94	0	0	1	10	11	10	1
WV N	221	43	7	41	0	0	0	0	16	16	0
WV S	543	321	50	276	4	0	0	5	12	10	2
5TH	7,300	7,122	4,507	2,528	10	40	37	452	548	440	108
LA E	576	540	284	298	0	5	5	31	38	28	10
LA M	53	44	25	59	0	1	3	7	15	6	9
LA W	481	225	37	183	0	0	5	15	18	13	5
MS N	127	61	12	73	0	0	0	6	2	2	0
MS S	209	22	47	153	1	0	0	14	14	12	2
TX N	864	772	364	389	1	4	2	114	52	46	6
TX E	297	198	48	247	0	1	2	21	38	37	1
TX S	3,097	2,951	2,263	646	7	23	11	159	321	262	59
TX W	1,576	2,111	1,425	580	1	6	3	85	50	34	16
6TH	4,362	3,034	1,127	1,784	77	4	44	161	178	174	4
KY E	270	228	94	139	0	0	5	29	2	2	0
KY W	673	258	90	166	0	1	1	16	24	22	2
MI E	910	1,195	540	553	77	3	22	59	116	114	2
MI W	231	225	33	172	0	0	0	7	7	7	0
OH N	584	593	179	412	0	0	2	30	3	3	0
OH S	542	181	41	136	0	0	4	11	0	0	0
TN E	256	222	51	143	0	0	8	27	0	0	0
TN M	315	81	43	50	0	0	2	9	26	26	0
TN W	581	69	56	13	0	0	0	3	0	0	0

TABLE H-1
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
CASES ACTIVATED
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	CRIMINAL DEFENDANTS FILED1	PSA CASES ACTIVATED2	TYPE OF CASE					RULE 40 TRANSFERS OUT	PRETRIAL DIVERSION		
			COMPLAINTS	INDICT/ INFOR	SUPERCEDING	MATERIAL WITNESS	OTHER		CASES ACTIVATED	PRE CHARGED PTD3	POST CHARGED PTD4
7TH.	2,773	1,961	753	1,134	66	1	7	130	105	101	4
IL,N	1,116	800	452	299	46	1	2	78	50	48	1
IL,C	333	74	15	58	0	0	1	3	2	2	0
IL,S	215	148	28	120	0	0	0	7	12	10	2
IN,N	393	357	90	266	0	0	1	11	8	8	0
IN,S	313	233	111	121	0	0	1	15	14	13	1
WI,E	269	226	35	178	15	0	0	9	4	4	0
WI,W	128	121	22	92	5	0	2	7	15	16	0
8TH.	2,560	2,342	717	1,588	3	13	21	170	134	123	11
AR,E	223	189	27	162	0	0	0	26	38	35	3
AR,W	119	51	24	23	0	0	4	4	18	17	1
IA,N	176	125	32	93	0	0	0	2	6	5	1
IA,S	154	138	30	108	0	0	0	10	1	1	0
MN	388	418	144	270	0	1	3	25	0	0	0
MO,E	421	471	234	231	0	2	4	35	30	30	0
MO,W	486	470	136	322	1	8	1	40	18	13	5
NE	204	135	18	113	0	0	4	15	11	11	0
ND	172	178	50	121	2	1	4	11	7	7	0
SD	239	167	20	145	0	1	1	2	5	4	1
9TH.	10,175	5,762	3,557	1,998	1	132	74	561	234	193	41
AK	208	156	38	113	0	0	5	8	5	5	0
AZ	1,463	1,445	1,123	307	0	7	8	77	46	39	7
CA,N	991	40	101	41	0	1	0	24	5	4	1
CA,E	747	65	494	146	0	10	1	57	3	3	0
CA,C	1,563	2,065	1,196	736	0	110	21	280	79	64	15
CA,S	1,911	0	0	0	0	0	0	0	4	4	0
HI	360	172	128	41	0	3	0	11	0	0	0
ID	142	142	14	125	0	0	1	12	10	9	1
MT	309	105	40	65	0	0	0	0	19	17	2
NV	401	344	16	217	0	0	35	66	26	12	14
OR	575	376	263	173	1	1	0	20	8	7	1
WA,E	444	42	28	14	0	0	0	3	29	29	0
WA,W	980	1	0	1	0	0	0	1	0	0	0
GUAM	71	30	10	17	0	0	3	0	0	0	0
NMI	18	1	1	0	0	0	0	0	0	0	0
10TH.	2,852	2,419	952	1,274	1	162	30	171	177	155	22
CO	475	436	252	180	0	0	4	60	7	5	2
KS	420	267	36	221	1	0	2	18	56	43	13
NM	772	834	420	253	0	148	13	48	36	32	4
OK,N	253	218	43	174	0	0	1	15	2	2	0
OK,E	75	97	17	80	0	0	0	9	2	1	1
OK,W	471	265	99	151	0	14	1	22	34	34	0
UT	337	293	70	214	0	0	9	3	37	35	2
WY	109	36	15	21	0	0	0	0	3	3	0
11TH.	6,594	5,692	2,559	2,898	18	47	70	887	157	150	7
AL,N	418	314	41	264	2	3	4	36	43	41	2
AL,M	234	232	32	196	2	0	2	11	4	1	3
AL,S	335	163	61	99	0	0	7	15	8	8	0
FL,N	404	232	46	180	0	0	6	25	0	0	0
FL,M	1,285	1,184	474	684	11	11	4	216	53	53	0
FL,S	2,498	2,583	1,505	1,023	3	28	24	489	12	11	1
GA,N	944	607	282	316	0	1	8	53	2	2	0
GA,M	201	141	42	96	0	3	0	29	17	16	1
GA,S	275	236	76	140	0	1	19	13	18	18	0

* EXCLUDES THE DISTRICT OF COLUMBIA.

1. INCLUDES PERSONS PROCEEDING BY INDICTMENT, INFORMATION OR CONSENT ON COMPLAINT AND PERSONS IN FUGITIVE STATUS. EXCLUDES PETTY, TRAFFIC, ESCAPES REOPENS, REMOVALS AND COMPLAINTS DISMISSED AT THE INITIAL APPEARANCE.

2. A PSA CASE IS ACTIVATED ON EACH CRIMINAL DEFENDANT. THIS COLUMN MAY INCLUDE PERSONS COUNTED ONCE AS A PSA CASE, BUT NAMED IN MORE THAN ONE CRIMINAL FILING.

3. NOT CHARGED IN U. S. DISTRICT COURT.

4. CHARGED IN U. S. DISTRICT COURT.

TABLE H-2
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
PSA INTERVIEWS AND TYPE OF BAIL REPORT
FOR THE TWELVE MONTH PERIOD ENDING DEC 31,1980

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	INTERVIEW STATUS: INTERVIEWED TOTAL	INTERVIEWED PCT.	REFUSED INTERVIEW TOTAL	REFUSED INTERVIEW PCT.	NOT INTERVIEWED TOTAL	NOT INTERVIEWED PCT.	TYPE OF REPORT: PRETRIAL TOTAL	PRETRIAL PCT.	PRETRIAL WITH RECOM	PRETRIAL W/OUT RECOM	POST BAIL TOTAL	POST BAIL PCT	OTHER TOTAL	OTHER PCT	NO REPORT TOTAL	NO REPORT PCT
TOTAL	38,461	33,860	88.0	2,550	6.6	2,051	5.3	32,042	83.3	30,315	1,727	3,815	9.9	550	1.4	2,052	5.3
1ST	1,458	1,374	94.2	45	3.1	39	2.7	1,348	92.5	1,325	23	39	2.7	9	.6	62	4.3
ME	139	135	97.8	2	1.4	1	.7	137	99.3	135	2	0	.0	1	.7	0	.0
MA	487	453	94.0	11	2.3	18	3.7	426	88.4	419	7	23	4.8	3	.6	30	6.2
NH	78	52	66.7	17	21.8	9	11.5	59	75.6	51	8	1	1.3	2	2.6	16	20.5
RI	10	0	.0	0	.0	10	100.0	0	.0	0	0	1	10.0	0	.0	9	90.0
PR	790	734	97.9	15	2.0	1	.1	726	96.8	720	6	14	1.9	3	.4	7	.9
2ND	3,463	3,364	97.1	64	1.8	35	1.0	3,196	92.3	3,129	67	146	4.2	36	1.0	85	2.5
CT	191	135	89.4	7	4.6	9	6.0	78	51.7	65	13	66	37.1	2	1.3	15	8.9
NY,N	34	24	70.6	5	14.7	5	14.7	24	70.6	22	2	8	23.5	0	.0	2	5.9
NY,E	1,307	1,306	99.9	1	.1	0	.0	1,299	99.4	1,295	4	3	.2	5	.4	0	.0
NY,S	1,597	1,584	99.2	10	.6	3	.2	1,522	95.3	1,479	43	19	1.2	22	1.4	34	2.1
NY,W	237	209	88.2	27	11.4	1	.4	161	67.9	156	5	51	21.5	6	2.5	19	8.0
VT	137	106	77.4	14	10.2	17	12.4	112	81.8	112	0	9	6.6	1	.7	15	10.9
3RD	2,598	2,338	90.0	100	3.8	160	6.2	1,860	71.6	1,644	216	511	19.7	33	1.3	194	7.5
DE	93	77	82.8	8	8.6	8	8.6	78	83.9	75	3	1	1.1	0	.0	14	15.1
NJ	744	641	86.2	24	3.2	79	10.6	571	76.7	464	107	73	9.8	4	.5	96	12.9
PA,E	758	691	91.2	15	2.0	52	6.9	547	68.2	468	49	204	26.9	8	1.1	29	3.8
PA,M	170	161	94.7	5	2.9	4	2.4	154	90.6	150	4	13	7.6	1	.6	2	1.2
PA,W	461	432	93.7	23	4.9	9	1.9	321	69.0	278	43	126	27.1	1	.2	17	3.7
VI	368	335	91.0	25	6.8	8	2.2	219	59.5	209	10	94	25.5	19	5.2	36	9.8
4TH	2,608	2,371	90.9	92	3.5	145	5.6	1,916	73.5	1,799	117	316	12.1	40	1.5	336	12.9
MD	923	889	96.3	33	3.6	1	.1	800	86.7	800	0	91	9.9	3	.3	29	3.1
NC,E	278	201	72.3	9	3.2	68	24.5	175	62.9	156	19	39	14.0	4	1.4	60	21.6
NC,M	212	208	98.1	3	1.4	1	.5	197	92.9	190	7	7	3.3	4	1.9	4	1.9
NC,W	522	479	91.8	28	5.4	15	2.9	311	59.6	241	70	89	17.0	16	3.1	106	20.3
SC	146	137	93.8	1	.7	8	5.5	40	27.4	32	8	62	42.5	1	.7	43	29.5
VA,E	0	0	.0	0	.0	0	.0	0	.0	0	0	0	.0	0	.0	0	.0
VA,W	146	127	87.0	8	5.5	11	7.5	90	61.6	86	4	7	4.8	12	8.2	37	25.3
WV,N	48	13	27.1	1	2.1	34	70.8	0	.0	0	0	0	.0	0	.0	48	100.0
WV,S	333	317	95.2	9	2.7	7	2.1	303	91.0	294	9	21	6.3	0	.0	9	2.7
5TH	7,122	6,017	84.5	986	13.8	119	1.7	6,320	88.7	6,208	112	511	7.2	52	.7	239	3.3
LA,E	592	576	97.3	13	2.2	3	.5	572	96.6	570	2	13	2.2	2	.3	5	.8
LA,M	88	78	88.6	5	5.7	5	5.7	79	89.8	79	0	5	5.7	2	2.3	2	2.3
LA,W	225	218	96.9	3	1.3	4	1.8	206	91.6	197	9	10	4.4	1	.4	8	3.6
MS,N	85	81	95.3	2	2.4	2	2.4	73	85.9	71	2	8	10.6	0	.0	3	3.5
MS,S	201	193	96.0	5	2.5	3	1.5	184	91.5	171	13	8	4.0	1	.5	8	4.0
TX,N	762	731	95.9	27	3.5	4	.5	693	90.9	681	12	40	5.2	7	.9	22	2.9
TX,E	198	191	96.5	1	.5	6	3.0	144	72.7	143	1	28	14.1	18	9.1	8	4.0
TX,S	2,956	2,813	95.2	91	3.1	52	1.8	2,541	86.0	2,489	52	275	9.3	13	.4	126	4.3
TX,W	2,015	1,136	56.4	839	41.6	40	2.0	1,828	90.7	1,807	21	123	6.1	8	.4	56	2.8
6TH	3,036	2,752	90.6	131	4.3	153	5.0	2,692	88.7	2,556	136	240	7.9	39	1.3	65	2.1
KY,E	238	218	91.6	10	4.2	10	4.2	215	90.3	210	5	11	4.6	11	4.6	1	.4
KY,W	258	246	95.3	8	3.1	4	1.6	165	64.0	149	16	80	34.9	2	.8	1	.4
MI,E	1,195	1,172	98.1	21	1.8	2	.2	1,125	94.1	1,110	15	64	5.4	2	.2	4	.3
MI,W	201	200	91.6	3	1.5	2	1.0	186	95.6	182	4	4	2.0	4	2.0	1	.5
OH,N	593	448	75.5	62	10.5	83	14.0	548	92.4	543	5	17	2.9	6	1.0	22	3.7
OH,S	181	124	68.5	14	7.7	43	23.8	167	92.3	159	8	6	3.3	2	1.1	6	3.3
TN,E	202	189	93.6	9	4.5	4	2.0	178	87.1	134	42	12	5.8	2	1.0	12	5.9
TN,M	95	91	95.8	1	1.1	3	3.2	55	57.9	53	2	13	13.7	10	10.5	17	17.9
TN,W	69	64	92.8	3	4.3	2	2.9	45	65.2	8	37	23	33.3	0	.0	1	1.4

TABLE M-2
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
PSA INTERVIEWS AND TYPE OF BAIL REPORT
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	INTERVIEW STATUS: INTERVIEWED TOTAL	INTERVIEWED PCT	REFUSED INTERVIEW TOTAL	REFUSED INTERVIEW PCT	NOT INTERVIEWED TOTAL	NOT INTERVIEWED PCT	TYPE OF REPORT: BAIL TOTAL	BAIL PCT	BAIL WITH RECOM	BAIL W/O RECOM	POST BAIL TOTAL	POST BAIL PCT	OTHER TOTAL	OTHER PCT	NO REPORT TOTAL	NO REPORT PCT
7TH	1,861	1,651	84.2	107	5.5	203	10.4	1,404	71.6	1,379	25	234	11.9	16	.8	307	15.7
[illegible]	800	638	79.8	22	2.8	140	17.5	418	52.3	403	15	95	11.9	6	.8	281	35.1
[illegible]	74	56	75.7	17	23.0	1	1.4	46	62.2	46	0	27	36.5	0	.0	1	1.4
[illegible]	148	119	80.4	18	12.2	11	7.4	120	81.1	116	4	19	12.8	0	.0	9	6.1
[illegible]	357	350	98.0	4	1.1	3	.8	352	98.6	352	0	5	1.4	0	.0	0	.0
[illegible]	233	205	88.0	23	9.9	5	2.1	186	79.8	183	3	37	15.9	0	.0	10	4.3
[illegible]	228	172	75.4	19	8.3	37	16.2	172	75.4	171	0	41	18.0	10	4.4	5	2.2
[illegible]	121	111	91.7	4	3.3	6	5.0	110	90.9	107	3	10	8.3	0	.0	1	.8
8TH	2,342	2,178	93.0	92	3.9	72	3.1	2,115	90.3	1,893	422	139	5.9	20	.9	67	2.9
[illegible]	189	186	98.4	3	1.6	0	.0	160	84.7	151	9	23	12.2	4	2.1	2	1.1
[illegible]	51	50	98.0	1	2.0	0	.0	16	31.4	15	1	20	39.2	1	2.0	14	27.5
[illegible]	125	123	98.4	2	1.6	0	.0	124	99.2	119	5	1	.8	0	.0	0	.0
[illegible]	138	128	92.8	2	1.4	8	5.8	136	98.6	136	0	2	1.4	0	.0	0	.0
[illegible]	416	398	95.5	18	4.3	1	.2	392	93.8	384	8	17	4.1	2	.5	7	1.7
[illegible]	471	443	94.1	23	4.9	5	1.1	446	94.7	83	363	22	4.7	0	.0	3	.6
[illegible]	470	453	96.4	16	3.4	1	.2	468	99.6	467	1	2	.4	0	.0	0	.0
[illegible]	135	102	75.6	9	6.7	24	17.8	100	74.1	96	4	12	8.9	4	3.0	19	14.1
[illegible]	176	159	89.3	7	3.9	12	6.7	153	85.4	152	0	12	6.7	5	2.8	8	4.5
[illegible]	167	135	80.8	11	6.6	21	12.6	121	72.5	90	31	28	16.8	4	2.4	14	8.4
9TH	5,762	4,560	79.1	488	8.5	714	12.4	4,885	84.8	4,651	234	583	10.1	76	1.3	218	3.8
[illegible]	156	87	55.8	8	5.1	61	39.1	134	85.9	113	21	12	7.7	3	1.9	7	4.5
[illegible]	1,445	1,127	78.0	55	3.8	263	18.2	1,091	75.5	1,014	77	186	13.6	37	2.6	121	8.4
[illegible]	143	136	95.1	3	2.1	4	2.8	57	39.9	45	12	69	48.3	5	3.5	12	8.4
[illegible]	651	231	35.5	122	18.7	298	45.8	522	80.2	500	22	115	17.7	12	1.8	2	.3
[illegible]	2,065	1,823	88.3	183	8.9	59	2.9	1,943	94.1	1,884	59	97	2.9	10	.5	55	2.7
[illegible]	0	0	.0	0	.0	0	.0	0	.0	0	0	0	.0	0	.0	0	.0
[illegible]	172	137	79.7	28	16.3	7	4.1	143	83.1	136	7	20	11.6	3	1.7	6	3.5
[illegible]	140	127	90.7	8	5.7	5	3.6	135	96.4	134	1	3	2.1	1	.7	1	.7
[illegible]	101	98	97.0	4	3.8	3	2.9	58	55.2	52	6	40	38.1	2	1.9	5	4.8
[illegible]	433	426	98.4	2	.5	5	1.2	409	94.5	409	0	21	4.8	3	.7	0	.0
[illegible]	378	299	79.1	75	19.8	4	1.1	380	85.2	343	17	18	4.0	0	.0	0	.0
[illegible]	42	38	90.5	0	.0	4	9.5	6	14.3	3	3	27	64.3	0	.0	9	21.4
[illegible]	1	1	100.0	0	.0	0	.0	0	.0	0	0	1	100.0	0	.0	0	.0
[illegible]	30	30	100.0	0	.0	0	.0	27	90.0	18	9	3	10.0	0	.0	0	.0
[illegible]	1	0	.0	0	.0	1	100.0	0	.0	0	0	1	100.0	0	.0	0	.0
10TH	2,419	2,126	87.9	71	2.9	222	9.2	1,765	73.0	1,711	54	382	15.8	78	3.2	194	8.0
[illegible]	436	412	94.5	14	3.2	10	2.3	417	95.6	415	2	2	.5	0	.0	17	3.9
[illegible]	260	255	98.1	3	1.2	2	.8	220	84.6	189	31	17	6.5	6	2.3	17	6.5
[illegible]	834	807	96.8	23	2.8	4	.5	646	77.5	638	8	173	20.7	10	1.2	5	.6
[illegible]	218	211	96.8	7	3.2	0	.0	216	99.1	215	1	0	.0	0	.0	2	.9
[illegible]	77	64	83.1	5	6.5	8	10.4	68	88.3	68	0	0	.0	1	1.3	8	10.4
[illegible]	265	217	81.9	12	4.5	36	13.6	178	67.2	172	6	9	3.4	50	18.9	28	10.6
[illegible]	293	128	43.7	6	2.0	159	54.3	9	3.1	5	4	165	56.3	11	3.8	108	36.9
[illegible]	36	32	88.9	1	2.8	3	8.3	11	30.6	9	2	16	44.4	0	.0	9	25.0
11TH	5,692	5,129	90.1	374	6.6	189	3.3	4,541	79.8	4,218	323	714	12.5	151	2.7	286	5.0
[illegible]	314	256	81.5	13	4.1	45	14.3	278	88.5	245	33	9	2.9	10	3.2	17	5.4
[illegible]	232	222	95.7	3	1.3	7	3.0	193	83.2	193	0	12	5.2	0	.0	27	11.6
[illegible]	183	138	84.7	13	8.0	12	7.4	122	74.8	111	11	20	12.3	14	8.6	7	4.3
[illegible]	232	203	87.5	24	10.3	5	2.2	154	66.4	105	49	13	5.6	34	14.7	31	13.4
[illegible]	1,184	1,083	91.5	76	6.4	25	2.1	1,024	86.5	987	37	139	11.7	10	.8	11	.9
[illegible]	2,583	2,320	89.8	201	7.8	62	2.4	2,121	82.1	1,945	176	377	14.6	59	2.3	26	1.0
[illegible]	667	559	92.1	38	6.3	10	1.6	453	74.6	444	9	111	18.3	10	1.6	33	5.4
[illegible]	141	135	95.7	3	2.1	3	2.1	124	87.9	122	2	7	5.0	6	4.3	4	2.8
[illegible]	236	213	90.3	3	1.3	20	8.5	72	30.5	66	6	26	11.0	8	3.4	130	55.1

* EXCLUDES THE DISTRICT OF COLUMBIA

TABLE H-3
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
RELEASE AND DETENTION AT THE INITIAL HEARING
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1980

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	RELEASED		DETAINED UNABLE TO MAKE BAIL		HELD IN TEMPORARY DETENTION[2]		DETAINED PENDING DET HEARING		DETAINED HEARING HELD ON SAME DAY[2]		PLED GUILTY		DETAINED BAIL NOT SET	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL	38,461	19,374	50.4	3,792	9.9	1,480	3.8	9,876	25.2	2,228	5.8	1,129	2.9	782	2.0
1ST	1,458	664	45.5	58	4.0	259	17.8	422	28.9	25	1.7	2	.1	28	1.9
ME	138	86	62.8	1	.7	5	3.6	36	26.1	8	5.8	0	.0	0	.0
MA	482	300	62.2	1	.2	1	.2	163	33.8	12	2.5	1	.2	4	.8
NH	78	56	71.8	1	1.3	7	9.0	8	10.2	0	.0	0	.0	6	7.7
RI	10	8	80.0	1	10.0	0	.0	1	10.0	0	.0	0	.0	0	.0
PR	750	212	28.3	54	7.2	246	32.8	214	28.5	5	.7	1	.1	18	2.4
2ND	3,463	1,727	49.9	136	3.9	32	.9	1,089	31.7	424	12.2	23	.7	22	.6
CT	151	97	64.2	2	1.3	6	4.0	27	17.9	2	1.3	0	.0	17	11.3
NY,N	34	15	44.1	0	.0	5	14.7	13	38.2	1	2.9	0	.0	0	.0
NY,E	1,307	567	43.4	3	.2	0	.0	567	43.4	170	13.0	0	.0	0	.0
NY,S	1,591	851	53.5	74	4.6	7	.4	436	27.3	225	14.1	0	.0	0	.0
NY,W	237	138	58.2	55	23.2	14	5.9	7	3.0	0	.0	18	7.6	5	2.1
VT	137	55	40.1	2	1.5	0	.0	49	35.8	26	19.0	5	3.6	0	.0
3RD	2,598	1,667	63.9	206	7.9	68	2.6	453	17.4	104	4.0	66	2.5	41	1.6
DE	93	57	61.3	6	6.5	0	.0	23	24.7	5	5.4	2	2.2	0	.0
NJ	744	541	72.4	40	5.4	14	1.9	80	10.8	56	7.5	2	.3	6	.8
PA,E	758	441	58.6	32	4.2	18	2.4	190	25.1	5	.7	51	6.7	22	2.9
PA,M	170	121	71.6	7	4.1	4	2.4	21	12.4	5	2.9	11	6.5	2	1.2
PA,W	465	323	69.5	23	4.9	19	4.1	95	20.4	5	1.1	0	.0	0	.0
VI	368	174	47.3	98	26.6	13	3.5	44	12.0	28	7.6	0	.0	11	3.0
4TH	2,608	1,662	63.7	76	2.9	52	2.0	520	19.9	58	2.2	101	4.1	133	5.1
MD	923	516	55.9	27	2.9	1	.1	201	21.8	24	2.6	103	11.2	51	5.5
NC,E	278	166	59.7	12	4.3	1	.4	78	28.1	11	4.0	0	.0	10	3.6
NC,M	212	138	65.1	17	8.0	0	.0	46	26.4	0	.0	0	.0	1	.5
NC,W	522	365	69.9	7	1.3	32	6.1	53	10.2	2	.4	1	.2	62	11.9
SC	146	65	44.5	7	4.8	5	3.4	54	37.0	13	8.9	0	.0	2	1.4
VA,E	0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
VA,W	146	116	79.5	3	2.1	6	4.1	17	11.6	0	.0	0	.0	4	2.7
WV,N	48	29	60.4	1	2.1	6	12.5	12	25.0	0	.0	0	.0	0	.0
WV,S	333	267	80.2	2	.6	1	.3	49	14.7	8	2.4	3	.9	3	.9
5TH	7,122	2,817	39.6	1,515	21.3	567	8.0	1,309	18.4	67	.9	707	9.9	140	2.0
LA,E	592	368	62.2	23	3.9	0	.0	201	34.0	0	.0	0	.0	0	.0
LA,M	88	69	78.4	1	1.1	2	2.3	11	12.5	4	4.5	0	.0	1	1.1
LA,W	225	164	72.9	3	1.3	0	.0	35	15.6	1	.4	15	6.7	7	3.1
MS,N	85	62	72.9	16	18.8	0	.0	5	5.9	0	.0	0	.0	2	2.4
MS,S	201	140	69.6	5	2.5	7	3.5	22	10.9	4	2.0	0	.0	3	1.5
TX,N	767	336	44.1	75	9.8	81	10.6	180	23.6	13	1.7	3	.4	74	9.7
TX,E	198	142	71.7	0	.0	2	1.0	29	14.6	25	12.6	0	.0	0	.0
TX,S	2,956	1,071	36.2	1,000	33.8	367	12.4	460	15.6	14	.5	44	1.5	26	.9
TX,W	2,015	491	24.4	392	19.5	108	5.4	348	17.2	6	.3	645	32.0	21	1.3
6TH	3,036	2,041	67.3	83	2.7	64	2.1	639	21.0	126	4.2	5	.2	75	2.5
KY,E	238	142	59.7	7	2.9	6	2.5	66	27.7	15	6.3	1	.4	1	.4
KY,W	256	151	60.9	0	.0	3	1.2	84	32.6	5	1.9	0	.0	9	3.5
MI,E	1,195	894	74.8	18	1.5	28	2.4	203	17.0	42	3.5	0	.0	8	.6
MI,W	205	142	69.8	2	1.0	0	.0	25	12.2	35	17.1	0	.0	0	.0
OH,N	993	406	68.5	37	6.2	14	2.4	83	14.0	22	3.7	4	.7	27	4.6
OH,S	18	106	59.7	11	6.1	3	1.1	34	18.8	0	.0	0	.0	25	13.8
TN,E	202	140	69.3	7	3.5	9	2.9	47	23.3	3	1.5	0	.0	0	.0
TN,M	95	51	53.7	1	1.1	4	4.2	31	32.6	4	4.2	0	.0	4	4.2
TN,W	69	1	1.4	0	.0	0	.0	66	95.7	2	2.9	0	.0	0	.0

TABLE H-3
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
RELEASE AND DETENTION AT THE INITIAL HEARING
FOR THE TWELVE MONTH PERIOD ENDING DEC 31,1988

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	RELEASED: TOTAL	RELEASED: PCT.	DETAINED UNABLE TO MAKE BAIL: TOTAL	DETAINED UNABLE TO MAKE BAIL: PCT.	HELD IN TEMPORARY DETENTION2 TOTAL	HELD IN TEMPORARY DETENTION2 PCT.	DETAINED PENDING DET HEARING: TOTAL	DETAINED PENDING DET HEARING: PCT.	DETAINED HEARING HELD ON SAME DAY3 TOTAL	DETAINED HEARING HELD ON SAME DAY3 PCT.	PLED GUILTY TOTAL	PLED GUILTY PCT.	DETAINED BAIL NOT SET TOTAL	DETAINED BAIL NOT SET PCT.
7TH...	1,961	1,178	60.1	60	3.1	20	1.0	551	28.1	48	2.4	42	2.1	61	3.1
IL,N	800	480	60.0	9	1.1	3	.4	248	31.0	42	5.3	6	.8	12	1.5
IL,C	74	36	48.6	0	.0	1	1.4	36	48.6	1	1.4	0	.0	0	.0
IL,S	148	101	68.6	5	3.4	0	.0	39	26.4	0	.0	0	.0	1	.7
IN,N	357	253	70.9	5	1.4	4	1.1	75	21.0	3	.8	0	.0	17	4.8
IN,S	233	133	57.1	7	3.0	0	.0	54	23.2	1	.4	8	3.4	30	12.9
WI,E	228	105	46.1	17	7.5	12	5.3	66	28.9	0	.0	28	12.3	0	.0
WI,W	121	69	57.0	17	14.0	0	.0	33	27.3	1	.8	0	.0	1	.8
8TH...	2,342	1,482	63.3	156	6.7	64	2.7	494	21.1	32	1.4	24	1.0	70	3.0
AR,E	189	141	74.6	10	5.3	4	2.1	18	9.5	7	3.7	0	.0	9	4.8
AR,W	51	30	58.8	2	3.9	0	.0	15	29.4	4	7.8	0	.0	0	.0
IA,N	125	103	82.4	1	.8	0	.0	20	16.0	1	.8	0	.0	0	.0
IA,S	138	95	68.8	4	2.9	1	.7	35	25.4	3	2.2	0	.0	0	.0
MN	418	257	56.7	23	5.5	57	13.6	78	18.7	1	.2	18	3.6	7	1.7
MO,E	471	300	63.7	92	19.5	1	.2	69	14.6	0	.0	1	.2	8	1.7
MO,W	470	286	60.9	23	4.9	1	.2	120	25.5	1	.2	1	.2	38	8.1
NE	135	91	67.4	0	.0	0	.0	26	19.3	3	2.2	14	10.4	1	.7
ND	178	112	62.9	0	.0	0	.0	54	30.3	8	4.5	0	.0	4	2.2
SD	167	97	58.1	1	.6	0	.0	59	35.3	4	2.4	3	1.8	3	1.8
9TH...	5,762	2,258	39.2	514	8.9	215	3.7	1,643	28.5	980	17.2	102	1.8	40	.7
AK	156	113	72.4	9	5.8	6	3.8	20	12.8	2	1.3	6	3.8	0	.0
AZ	1,445	444	30.7	268	18.5	159	11.0	503	34.7	34	2.4	17	1.2	21	1.5
CA,N	143	52	36.4	6	4.2	4	2.8	64	44.8	17	11.9	0	.0	0	.0
CA,E	651	142	21.5	10	1.5	11	1.7	442	67.9	14	2.2	34	5.2	0	.0
CA,C	2,065	987	47.8	181	8.8	8	.4	124	6.0	764	37.0	0	.0	1	.0
CA,S	0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
HI	172	57	33.1	8	4.7	5	2.9	77	44.8	7	4.1	11	6.4	7	4.1
ID	147	99	67.3	0	.0	0	.0	26	17.6	4	2.9	3	2.1	8	5.7
MT	105	45	42.9	5	4.8	18	17.1	36	34.3	1	1.0	0	.0	0	.0
NV	433	213	49.2	4	.9	0	.0	138	31.9	61	14.1	17	3.9	0	.0
OR	378	82	21.7	3	.8	1	.3	206	54.5	83	22.5	0	.0	1	.3
WA,E	42	14	33.3	20	47.6	2	4.8	6	14.3	0	.0	0	.0	0	.0
WA,W	1	0	.0	0	.0	0	.0	1	100.0	0	.0	0	.0	0	.0
GUAM	30	12	40.0	0	.0	1	3.3	1	3.3	1	3.3	14	46.7	1	3.3
NMI	1	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	1	100.0
10TH	2,419	1,204	49.8	91	3.8	20	.8	873	40.2	99	4.1	9	.4	23	1.0
CO	436	259	59.4	4	.9	0	.0	163	37.4	7	1.6	2	.5	1	.2
KS	260	182	70.0	10	3.8	10	3.8	33	12.7	10	3.8	0	.0	15	5.8
NM	834	229	27.5	31	3.7	1	.1	512	61.4	59	7.1	1	.1	1	.1
OK,N	218	154	70.6	19	8.7	2	.9	31	14.2	12	5.5	0	.0	0	.0
OK,E	77	43	55.8	13	16.9	3	3.9	9	11.7	2	2.6	2	2.6	5	6.5
OK,W	265	135	50.9	13	4.9	4	1.5	104	39.2	7	2.6	1	.4	1	.4
UT	293	170	58.0	0	.0	0	.0	118	40.3	2	.7	3	1.0	0	.0
WY	36	32	88.9	1	2.8	0	.0	3	8.3	0	.0	0	.0	0	.0
11TH	5,692	2,669	46.9	891	15.8	119	2.1	1,573	27.6	253	4.4	32	.6	149	2.6
AL,N	314	238	75.8	7	2.2	1	.3	25	8.0	3	1.0	2	.6	38	12.1
AL,M	232	182	78.4	21	9.1	7	3.0	17	7.3	1	.4	0	.0	4	1.7
AL,S	163	84	39.3	5	3.1	9	5.5	71	43.6	12	7.4	0	.0	2	1.2
FL,N	232	114	49.1	7	3.0	3	1.3	96	41.4	7	3.0	1	.4	4	1.7
FL,M	1,184	572	48.3	65	5.5	24	2.0	328	27.7	181	15.3	0	.0	14	1.2
FL,S	2,583	939	36.4	715	27.7	51	2.0	769	29.8	33	1.3	0	.0	76	2.9
GA,N	607	343	56.5	41	6.8	11	1.8	190	32.8	9	1.5	0	.0	4	.7
GA,M	161	88	62.4	14	9.9	7	5.0	27	19.1	5	3.5	0	.0	0	.0
GA,S	236	129	54.7	22	9.3	6	2.5	41	17.4	2	.8	29	12.3	7	3.0

* EXCLUDES THE DISTRICT OF COLUMBIA.

** EXCLUDES RULE 40S TRANSFERRED TO THE DISTRICT OF COLUMBIA.

1. INCLUDES CASES DISMISSED.

2. TEMPORARY DETENTION UNDER 3142(D). DEFENDANT CHARGED WITH A INSTANT OFFENSE WHILE ON PRETRIAL RELEASE FOR ANOTHER CHARGE, OR ON PAROLE OR PROBATION FOR A PRIOR CONVICTION OR DEFENDANT IS IN ILLEGAL ALIEN STATUS.

3. DETAINED PENDING DETENTION HEARING/HELD ON SAME DAY OF INITIAL HEARING.

TABLE H-4
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DETENTION HEARINGS**
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	DEFENDANTS WITH DETENTION HEARING HELD		MOTIONS FOR DETENTION BY		WITH PRESUMPTION	DETENTION ORDERED		REASONS FOR DETENTION							
									FLIGHT		DANGER TO WITNESS		DANGER TO COMMUNITY		FLIGHT& DANGER	
		TOTAL	PCT.	GOVT.	COURT		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL...	38,481	11,800	30.7	10,678	1,125	7,265	8,843	73.3	4,095	47.4	137	1.6	1,082	12.5	3,329	38.5
1ST...	1,458	441	30.2	405	37	346	335	76.0	93	27.8	5	1.5	26	7.8	211	63.0
ME.....	138	43	31.2	11	32	6	24	55.8	7	29.2	3	12.5	0	.0	14	58.3
MA.....	482	170	35.3	170	0	131	115	67.6	47	40.9	2	1.7	20	17.4	46	40.0
NH.....	78	8	10.3	8	0	16	8	100.0	6	75.0	0	.0	0	.0	2	25.0
RI.....	10	1	10.0	1	0	0	1	100.0	0	.0	0	.0	0	.0	1	100.0
PR.....	750	219	29.2	215	5	194	187	85.4	33	17.6	0	.0	6	3.2	148	79.1
2ND...	3,483	1,522	44.0	1,508	14	1,149	1,212	79.6	1,042	86.0	6	.5	37	3.1	127	10.5
CT.....	151	28	18.5	28	0	32	13	46.4	12	92.3	0	.0	1	7.7	0	.0
NY,N....	34	14	41.2	14	0	8	14	100.0	3	21.4	0	.0	3	21.4	8	57.1
NY,E....	1,307	737	56.4	734	3	701	696	94.4	620	89.1	4	.6	1	.1	1	.1
NY,S....	1,597	660	41.3	649	11	362	429	65.0	298	69.5	0	.0	26	6.1	105	24.5
NY,W....	237	7	3.0	7	0	6	5	71.4	2	40.0	1	20.0	1	20.0	1	20.0
VT.....	137	76	55.5	76	0	40	55	72.4	37	67.3	1	1.8	5	9.1	12	21.8
3RD...	2,598	944	20.9	534	10	395	420	77.2	127	30.2	9	2.1	82	21.9	192	45.7
DE.....	93	28	30.1	26	2	21	22	78.6	19	86.4	0	.0	0	.0	3	13.6
NJ.....	744	129	17.3	124	5	94	105	81.4	35	33.3	1	1.0	13	12.4	56	53.3
PA,E....	758	193	25.5	192	1	114	136	70.5	25	18.4	1	.7	20	14.7	90	66.2
PA,M....	170	25	14.7	25	0	19	20	80.0	6	30.0	0	.0	4	20.0	10	50.0
PA,W....	465	99	21.3	98	1	126	81	81.8	21	25.9	2	2.5	42	51.9	16	19.8
VI.....	368	70	19.0	69	1	21	56	80.0	21	37.5	5	8.9	13	23.2	17	30.4
4TH...	2,608	576	22.1	532	44	471	419	72.7	121	28.9	10	2.4	82	19.6	206	49.2
MD.....	923	225	24.4	212	13	172	152	67.6	29	19.1	1	.7	27	17.8	95	62.5
NC,E....	278	89	32.0	85	4	88	66	74.2	14	21.2	0	.0	9	13.6	43	65.2
NC,M....	212	58	26.4	55	1	44	48	85.7	13	27.1	0	.0	18	37.5	17	35.4
NC,W....	522	54	10.3	53	1	44	49	90.7	17	34.7	2	4.1	12	24.5	18	36.7
SC.....	146	67	45.9	51	16	32	35	52.2	24	68.6	1	2.9	4	11.4	6	17.1
VA,E....	0	0	.0	0	0	0	0	.0	0	.0	0	.0	0	.0	0	.0
VA,W....	146	17	11.6	9	8	17	14	82.4	6	42.9	0	.0	1	7.1	7	50.0
WV,N....	48	12	25.0	12	0	12	12	100.0	8	66.7	0	.0	2	16.7	2	16.7
WV,S....	333	56	16.8	55	1	82	43	76.8	10	23.3	6	14.0	9	20.9	18	41.9
5TH...	7,122	1,354	19.0	1,160	194	725	941	69.5	512	54.4	26	2.8	142	15.1	261	27.7
LA,E....	592	201	34.0	198	3	146	139	69.2	40	28.8	2	1.4	13	9.4	84	60.4
LA,M....	88	12	13.6	11	1	7	6	50.0	6	100.0	0	.0	0	.0	0	.0
LA,W....	225	35	15.6	31	4	19	22	62.9	16	72.7	0	.0	3	13.6	3	13.6
MS,N....	89	5	5.6	5	0	5	5	100.0	2	40.0	0	.0	0	.0	3	60.0
MS,S....	201	23	11.4	19	4	12	21	91.3	18	76.2	2	9.5	2	9.5	1	4.8
TX,N....	762	188	24.7	174	14	71	99	52.7	41	41.4	4	4.0	26	26.3	28	28.3
TX,E....	198	54	27.3	52	2	33	40	74.1	16	40.0	2	5.0	5	12.5	17	42.5
TX,S....	2,956	484	16.4	354	130	288	388	80.4	250	64.3	8	2.1	61	15.7	70	18.0
TX,W....	2,015	352	17.5	316	36	163	220	62.5	125	56.8	8	3.6	32	14.5	55	25.0
6TH...	3,036	736	24.2	638	98	459	604	82.1	227	37.6	13	2.2	96	15.9	268	44.4
KY,E....	238	78	32.8	75	3	85	61	78.2	24	39.3	0	.0	8	13.1	29	47.5
KY,W....	258	87	33.7	79	8	92	68	78.2	18	26.1	2	2.9	20	29.0	28	42.0
MI,E....	1,195	237	19.8	223	14	131	211	89.0	67	31.8	5	2.4	29	13.7	110	52.1
MI,W....	205	60	29.3	60	0	60	60	100.0	56	93.3	0	.0	0	.0	4	6.7
OH,N....	583	97	16.7	84	13	61	75	86.2	30	26.7	3	4.0	8	10.7	44	58.7
OH,S....	181	34	18.8	32	12	7	33	97.1	9	27.3	0	.0	7	21.2	17	51.5
TN,E....	202	50	24.8	47	3	42	38	76.0	14	36.8	0	.0	7	18.4	17	44.7
TN,M....	95	35	36.8	29	6	29	29	82.9	11	37.9	2	6.9	10	34.5	6	20.7
TN,W....	69	68	98.6	19	49	33	28	41.2	8	28.6	1	3.6	7	25.0	12	42.9

TABLE H-4
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DETENTION HEARINGS**
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	DEFENDANTS WITH DETENTION HEARING HELD TOTAL	PCT.	MOTIONS FOR DETENTION BY GOVT.	COURT	WITH PRESUMPTION	DETENTION ORDERED TOTAL	PCT.	REASONS FOR DETENTION: FLIGHT TOTAL	PCT.	DANGER TO WITNESS TOTAL	PCT.	DANGER TO COMMUNITY TOTAL	PCT.	FLIGHT& DANGER TOTAL	PCT.
7TH...	1,961	596	30.4	578	18	312	417	70.0	136	32.6	6	1.4	87	20.9	188	45.1
IL,N....	800	289	36.1	286	3	96	184	58.7	43	26.2	0	.0	40	24.4	81	49.4
IL,C....	74	37	50.0	36	1	32	27	73.0	7	25.9	0	.0	3	11.1	17	63.0
IL,S....	148	39	26.4	39	1	20	37	94.9	15	40.5	1	2.7	9	24.3	12	32.4
IN,N....	357	77	21.6	77	0	58	69	89.6	27	39.1	4	5.8	13	18.8	25	36.2
IN,S....	233	54	23.2	46	8	30	49	90.7	22	44.9	0	.0	1	2.0	26	53.1
WI,E....	228	66	28.9	62	4	46	40	60.6	15	37.5	0	.0	8	20.0	17	42.5
WI,W....	121	34	28.1	33	1	30	31	91.2	7	22.6	1	3.2	13	41.9	10	32.3
8TH...	2,342	920	22.2	463	57	375	399	76.7	197	49.4	16	4.0	55	13.8	131	32.8
AR,E....	189	21	11.1	21	0	14	9	42.9	3	33.3	1	11.1	1	11.1	4	44.4
AR,W....	51	18	37.3	11	8	4	13	68.4	9	69.2	0	.0	1	7.7	3	23.1
IA,N....	125	21	16.8	18	3	0	20	95.2	19	95.0	1	5.0	0	.0	0	.0
IA,S....	138	38	27.5	32	6	33	30	78.9	5	16.7	0	.0	0	.0	25	83.3
MN.....	418	79	18.9	65	15	35	61	77.2	26	42.6	1	1.6	4	6.6	30	49.2
MO,E....	471	69	14.6	52	17	82	65	94.2	40	61.5	3	4.6	4	6.2	18	27.7
MO,W....	470	121	25.7	121	0	99	89	73.6	49	55.1	2	2.2	15	16.9	23	25.8
NE.....	135	27	20.0	26	1	14	26	96.3	16	61.5	0	.0	5	19.2	5	19.2
ND.....	178	62	34.8	57	5	42	49	79.0	25	51.0	2	4.1	6	12.2	16	32.7
SD.....	167	63	37.7	60	2	42	37	58.7	5	13.5	6	16.2	19	51.4	7	18.9
9TH...	5,762	2,825	45.6	2,529	98	1,486	1,873	75.2	840	42.6	15	.8	222	11.3	996	45.4
AK.....	156	21	13.5	20	1	22	19	90.5	9	47.4	0	.0	2	10.5	8	42.1
AZ.....	1,445	535	37.0	514	21	402	345	64.5	159	46.1	4	1.2	25	7.2	157	45.5
CA,N....	143	81	56.6	81	0	35	32	39.5	14	43.8	0	.0	14	3.8	131	35.3
CA,E....	661	456	70.0	442	14	145	371	81.4	225	60.6	1	.3	110	14.8	346	46.9
CA,C....	2,065	886	42.9	876	12	395	743	83.9	281	37.8	0	.0	0	.0	0	.0
CA,S....	0	0	.0	0	0	0	0	.0	0	.0	0	.0	12	20.0	26	43.3
HI.....	172	81	47.1	79	2	83	60	74.1	22	36.7	0	.0	1	4.8	10	47.6
ID.....	140	29	20.7	29	0	18	21	72.4	10	47.6	0	.0	3	12.5	6	28.0
MT.....	105	37	35.2	36	1	14	24	64.9	15	62.5	0	.0	8	5.9	44	33.3
NV.....	433	199	46.0	194	5	95	138	69.3	83	60.1	1	.7	29	10.3	154	72.3
OR.....	378	290	76.7	251	39	273	213	73.4	18	8.5	2	.9	2	90.0	0	.0
WA,E....	42	6	14.3	3	3	9	4	66.7	2	50.0	0	.0	0	.0	0	.0
WA,W....	1	1	100.0	1	0	0	1	100.0	1	100.0	0	.0	0	.0	0	.0
GUAM....	30	3	10.0	3	0	1	2	66.7	1	50.0	1	50.0	0	.0	0	.0
NMI.....	1	0	.0	0	0	0	0	.0	0	.0	0	.0				
10TH..	2,419	1,067	44.1	800	467	337	667	62.5	386	57.9	10	1.5	56	8.4	215	32.2
CO.....	436	170	39.0	160	10	127	116	68.2	83	71.6	0	.0	3	2.6	30	25.9
KS.....	280	43	15.5	40	3	14	40	93.0	14	35.0	2	5.0	3	7.5	21	52.5
NM.....	834	571	68.5	177	394	16	275	48.2	208	75.6	4	1.5	23	8.4	40	14.5
OK,N....	218	43	19.7	40	3	32	36	83.7	10	27.8	1	2.8	3	8.3	22	61.1
OK,E....	77	9	11.7	8	1	6	2	22.2	0	.0	0	.0	1	50.0	1	50.0
OK,W....	265	108	40.8	106	2	87	82	75.9	16	19.5	0	.0	6	7.3	60	73.2
UT.....	293	120	41.0	66	54	93	113	94.2	54	47.8	2	1.8	17	15.0	40	35.4
WY.....	36	3	8.3	3	0	2	3	100.0	1	33.3	1	33.3	0	.0	1	33.3
11TH..	5,882	1,819	32.0	1,731	88	1,210	1,256	69.0	414	33.8	21	1.7	187	14.9	634	50.5
AL,N....	314	27	8.6	27	0	17	19	70.4	8	42.1	3	15.8	2	10.5	6	31.6
AL,M....	232	18	7.8	16	2	16	10	55.6	8	80.0	0	.0	1	10.0	**1	10.0
AL,S....	163	83	50.9	82	1	67	48	57.8	12	25.0	2	4.2	8	16.7	26	54.2
FL,N....	232	102	44.0	100	2	82	93	91.2	25	26.9	0	.0	9	9.7	59	63.4
FL,M....	1,184	508	42.9	439	69	485	418	82.3	104	24.9	8	1.9	48	11.5	258	61.7
FL,S....	2,583	801	31.0	796	5	305	476	59.4	168	35.3	3	.6	72	15.1	233	48.9
GA,N....	807	206	33.9	203	3	183	133	64.6	63	47.4	2	1.5	38	28.6	30	22.6
GA,M....	141	32	22.7	31	1	34	26	81.3	7	26.9	2	7.7	1	3.8	16	61.5
GA,S....	236	42	17.8	37	5	21	33	78.6	19	57.6	1	3.0	8	24.2	5	15.2

* EXCLUDES THE DISTRICT OF COLUMBIA.

** INCLUDES DETENTION HEARINGS HELD FOLLOWING THE INITIAL HEARING ONLY.

*** EXCLUDES RULE 40S TRANSFERRED TO THE DISTRICT OF COLUMBIA.

TABLE H-6
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
CONDITIONS IMPOSED AT THE INITIAL HEARING
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	PERSONAL RECOG-NIZANCE	UN-SECURED BOND	CASH BOND	COLL-ATERAL BOND	CORP-ORATE SURETY	PSA SUPER-VISION	3RD PARTY CUSTODY	REST-RICTIVE COND.	TREAT-MENT COND.	RESTR TREAT COND.	BAIL NOT SET	DETEN-TION STATUS†
TOTAL	38,461	4,8[illegible]	12,235	3,756	2,273	3,482	15,272	1,922	10,243	780	1,950	2,490	21,024
1ST	1,458	166	346	131	172	10	631	37	923	9	36	61	1,010
ME	138	7	36	6	57	0	80	0	69	1	5	4	70
MA	482	33	251	90	17	4	266	14	285	1	9	17	282
NH	78	10	36	5	2	1	7	2	23	0	0	7	23
RI	10	1	1	3	5	0	8	0	7	1	0	0	1
PR	750	101	22	67	91	5	270	21	299	2	22	33	634
2ND	3,463	552	1,034	415	252	34	1,002	70	1,089	80	99	91	2,634
CT	151	3	63	9	18	13	95	6	59	4	14	23	44
NY,N	34	2	5	3	4	3	1	0	1	0	1	0	31
NY,E	1,317	172	407	14	115	1	193	1	299	40	4	7	1,226
NY,S	1,597	314	451	300	90	9	601	9	607	32	26	7	1,093
NY,W	231	54	75	53	24	8	46	1	56	2	8	8	21
VT	131	7	33	36	1	0	66	3	57	2	6	6	129
3RD	2,588	181	1,229	272	274	80	886	183	901	83	82	113	996
DE	93	2	21	1	16	0	11	1	1	1	0	2	49
NJ	744	41	398	73	57	35	231	12	187	21	18	21	244
PA,E	756	23	361	107	41	7	307	21	148	15	14	62	320
PA,M	176	52	60	15	10	7	31	3	21	2	5	7	47
PA,W	461	6	214	51	25	28	123	13	80	17	11	6	197
VI	264	37	105	25	125	3	183	143	64	6	34	15	139
4TH	2,604	599	901	113	199	66	1,236	159	678	124	194	225	987
MD	923	46	70	51	32	34	282	58	77	94	82	98	376
NC,E	278	83	95	6	38	5	180	35	159	1	14	10	153
NC,M	212	71	52	17	20	2	162	12	31	14	40	2	103
NC,W	522	5	315	9	48	2	375	40	51	4	41	81	109
SC	146	2	44	15	20	10	85	7	45	6	3	21	91
VA,E	0	0	0	0	0	0	0	0	0	0	0	0	0
VA,W	146	36	96	11	25	4	84	6	98	3	9	5	35
WV,N	48	3	25	3	1	0	16	0	15	0	0	0	27
WV,S	333	12	250	1	15	0	52	0	244	2	5	8	94
5TH	7,127	575	1,612	1,062	218	1,367	2,561	161	1,271	195	182	976	2,666
LA,E	982	2	363	14	79	4	246	60	20	100	16	3	376
LA,M	88	6	55	1	1	5	65	0	60	0	0	13	17
LA,W	221	75	86	12	6	15	97	11	36	3	1	8	52
MS,N	85	1	33	10	26	8	59	0	2	0	0	2	10
MS,S	201	13	8	10	0	11	8	0	27	0	0	7	91
TX,N	762	18	83	43	66	109	376	23	136	16	59	130	339
TX,E	196	6	133	12	1	6	94	9	37	11	23	1	95
TX,S	2,956	111	511	880	4	900	914	43	535	43	21	93	1,144
TX,W	2,015	53	338	280	35	311	682	15	533	14	62	719	832
6TH	3,036	221	1,732	187	116	94	1,539	96	1,185	15	113	121	1,301
KY,E	239	32	93	11	29	3	96	7	39	1	30	5	140
KY,W	258	6	158	16	3	1	125	9	102	3	8	11	152
MI,E	1,195	18	884	39	7	16	901	48	863	1	89	26	434
MI,W	201	1	133	28	0	3	169	0	51	0	0	0	94
OH,N	593	46	309	49	17	41	78	13	13	2	2	51	164
OH,S	181	72	23	12	14	1	31	2	11	4	1	25	67
TN,E	202	24	90	14	30	11	76	5	51	3	1	2	90
TN,M	85	18	21	11	8	0	48	12	33	1	11	5	69
TN,W	69	2	5	7	0	20	15	0	22	0	0	2	92

TABLE M-5
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
CONDITIONS IMPOSED AT THE INITIAL HEARING
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES ACTIVATED	PERSONAL RECOGNIZANCE	UNSECURED BOND	CASH BOND[1]	COLLATERAL BOND	CORPORATE SURETY	PSA SUPERVISION	3RD PARTY CUSTODY	RESTRICTIVE COND.	TREATMENT COND.	RESTA TREAT COND	BAIL NOT SET	DETENTION STATUS[2]
7TH	1,861	308	830	192	87	23	985	156	227	56	20	121	906
IL,N	800	2	458	80	49	6	364	125	28	32	5	38	457
IL,C	74	2	18	21	5	0	5	8	16	1	2	1	65
IL,S	148	1	92	12	9	2	100	3	87	0	3	9	62
IN,N	357	86	184	11	2	1	243	4	43	10	7	26	142
IN,S	233	86	37	14	4	13	111	0	36	12	2	40	94
WI,E	228	68	28	39	17	1	86	10	66	1	3	6	115
WI,W	121	83	13	15	1	1	76	6	51	0	3	2	82
8TH	2,342	494	901	147	184	106	1,278	59	898	79	313	173	885
AR,E	189	122	7	20	4	7	140	1	17	10	2	14	34
AR,W	91	3	23	7	1	4	38	2	11	0	0	0	31
IA,N	125	41	80	3	0	0	96	0	1	22	53	1	41
IA,S	138	1	83	8	2	20	61	0	63	1	2	0	62
MN	418	52	152	51	3	37	175	2	30	9	4	49	153
MO,E	471	8	208	34	154	7	321	3	195	11	86	12	118
MO,W	470	83	211	14	0	28	295	31	156	0	136	57	198
NE	135	34	54	4	0	0	46	0	34	2	3	21	49
ND	178	61	32	3	0	1	49	9	31	3	12	4	113
SD	167	69	51	3	0	2	58	11	60	12	3	15	86
9TH	5,782	883	911	734	519	218	1,938	247	1,589	81	231	273	4,742
AK	156	38	56	15	2	14	35	11	36	1	2	6	42
AZ	1,445	208	122	304	69	82	323	46	361	7	45	99	1,021
CA,N	143	11	36	15	24	14	87	14	24	20	3	4	116
CA,E	85	40	70	13	53	33	173	86	137	5	21	57	814
CA,C	2,065	14	531	322	346	34	824	47	593	14	81	54	1,841
CA,S	0	0	0	0	0	0	0	0	0	0	0	0	0
HI	172	11	48	10	4	20	45	10	31	7	20	21	138
ID	140	81	18	3	3	0	29	17	22	1	10	16	43
MT	105	47	1	11	6	0	46	0	32	0	4	6	71
NV	433	164	76	18	10	9	206	9	215	1	23	21	334
OR	378	146	4	10	2	2	154	4	136	0	11	6	902
WA,E	42	1	8	12	0	0	14	0	0	0	1	0	12
WA,W	1	0	0	0	0	0	0	0	0	0	0	0	2
GUAM	30	12	2	1	0	0	2	3	2	0	0	9	0
NMI	1	0	0	0	0	0	0	0	0	0	0	1	0
10TH	2,419	525	805	161	27	166	1,206	297	851	47	148	80	1,719
CO	436	51	152	84	12	16	223	18	119	22	17	10	260
KS	260	36	141	9	0	16	129	2	42	3	27	16	86
NM	834	269	229	14	0	41	455	260	430	2	33	9	836
OK,N	218	2	114	9	4	52	167	0	124	1	42	1	79
OK,E	77	1	43	18	1	0	16	0	7	4	7	0	14
OK,W	265	28	83	13	1	37	145	6	91	12	20	13	193
UT	293	135	22	13	3	3	59	4	25	2	1	2	227
WY	36	3	21	1	6	1	12	7	13	1	1	0	4
11TH	5,692	361	1,867	342	245	1,318	2,029	98	1,431	85	172	310	3,086
AL,N	314	5	223	4	19	2	86	3	16	1	2	43	45
AL,M	232	5	174	5	20	8	35	1	3	4	1	9	29
AL,S	183	47	25	7	1	24	99	7	6	14	44	8	133
FL,N	232	77	19	30	2	4	97	7	85	0	1	11	187
FL,M	1,184	110	401	59	47	137	359	85	243	28	54	40	801
FL,S	2,883	8	686	187	8	1,037	874	11	726	7	86	141	1,318
GA,N	807	18	251	5	115	71	431	3	237	11	5	25	336
GA,M	141	14	53	16	18	10	60	0	63	0	6	2	61
GA,S	236	77	28	29	15	25	88	1	72	0	3	31	76

* EXCLUDES THE DISTRICT OF COLUMBIA.

** EXCLUDES RULE 40S TRANSFERRED TO THE DISTRICT OF COLUMBIA.

1. A BOND REQUIRING THE CASH DEPOSIT OF THE TOTAL FACE AMOUNT OR PERCENTAGE OF THE FACE AMOUNT.

2. DEFENDANT DETAINED IN TEMPORARY DETENTION OR DETAINED PENDING DETENTION HEARING.

TABLE M-5
U.S. DISTRICT COURTS•
PRETRIAL SERVICES ACT
DEFENDANTS RELEASED ON SUPERVISION
(INCLUDES RULE 40 TRANSFERS RECEIVED)••
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES IN CURR DIST	DEFENDANTS RELEASED ON SUPERVISION		WHEN RELEASED AT INITIAL HEARING	WHEN RELEASED AT DETENTION HEARING	WHEN RELEASED AT BAIL REVIEW HEARING	DIVERSION CASES ACTIVATED	PERSONS ON DIVERSION SUPERVISION
TOTAL...	38,345	15,414	40.2	11,502	2,111	1,798	2,197	2,172
1ST...	1,450	626	43.2	489	94	43	98	98
ME.....	135	83	61.5	60	20	3	7	7
MA.....	485	258	53.2	210	43	5	70	70
NH.....	79	12	15.2	10	1	1	6	6
RI.....	13	9	69.2	8	1	0	4	4
PR.....	738	264	35.8	201	29	34	11	11
2ND...	3,460	925	26.7	647	244	34	33	32
CT.....	152	95	62.5	78	12	5	5	5
NY,N....	68	12	17.6	10	1	1	0	0
NY,E....	1,266	201	15.9	122	78	1	0	0
NY,S....	1,589	489	30.8	349	130	10	11	10
NY,W....	246	62	25.2	41	6	15	8	8
VT.....	139	66	47.5	47	17	2	9	9
3RD...	2,567	888	34.6	714	98	75	289	274
DE.....	102	17	16.7	11	5	1	5	5
NJ.....	695	228	32.8	197	12	19	172	157
PA,E....	758	303	40.0	234	57	12	5	5
PA,M....	181	37	20.4	29	3	5	28	28
PA,W....	456	123	26.9	103	14	5	79	79
VI.....	371	180	48.5	140	7	33	0	0
4TH...	2,743	1,379	50.3	1,063	133	183	242	242
MD.....	910	307	33.7	208	58	41	53	53
NC,E....	305	211	69.2	158	22	31	47	47
NC,M....	228	168	73.7	138	9	21	14	14
NC,W....	538	399	74.2	357	15	27	20	20
SC.....	154	100	64.9	59	17	24	57	57
VA,E....	39	7	17.9	4	1	2	14	14
VA,W....	155	88	56.8	77	1	10	9	9
WV,N....	57	24	42.1	15	2	7	16	16
WV,S....	357	75	21.0	47	8	20	12	12
5TH...	7,161	2,777	38.8	1,877	272	627	523	522
LA,E....	603	254	42.1	178	31	45	35	35
LA,M....	86	64	74.4	62	2	0	14	14
LA,W....	255	105	41.2	95	7	2	19	19
MS,N....	89	60	67.4	54	1	5	2	2
MS,S....	209	11	5.3	9	2	0	16	16
TX,N....	738	407	55.1	274	38	95	62	62
TX,E....	201	92	45.8	77	9	6	39	39
TX,S....	2,952	1,124	38.1	718	93	313	257	256
TX,W....	2,028	660	32.5	410	89	161	79	79
6TH...	3,076	1,564	50.8	1,349	155	60	184	184
KY,E....	223	94	42.2	77	15	2	3	3
KY,W....	260	135	51.9	107	19	9	20	20
MI,E....	1,209	892	73.8	822	57	13	117	117
MI,W....	215	172	80.0	146	26	0	7	7
OH,N....	592	75	12.7	57	10	8	4	4
OH,S....	199	37	18.6	26	2	8	1	1
TN,E....	187	75	40.1	62	6	7	2	2
TN,M....	107	64	59.8	45	7	12	27	27
TN,W....	84	20	23.8	7	13	[illegible]	3	3

TABLE H-6
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS RELEASED ON SUPERVISION
(INCLUDES RULE 40 TRANSFERS RECEIVED)**
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES IN CURR DIST	DEFENDANTS RELEASED ON SUPERVISION		WHEN RELEASED			DIVERSION CASES ACTIVATED	PERSONS ON DIVERSION SUPERVISION
				AT INITIAL HEARING	AT DETENTION HEARING	AT BAIL REVIEW HEARING		
7TH...	2,051	1,039	50.7	828	135	76	115	115
IL,N....	766	360	47.0	262	75	23	56	56
IL,C....	99	13	13.1	8	4	1	3	3
IL,S....	173	116	67.1	102	8	6	13	13
IN,N....	391	266	68.0	237	17	12	8	8
IN,S....	247	117	47.4	103	5	9	16	16
WI,E....	246	88	35.8	45	22	21	5	5
WI,W....	129	79	61.2	71	4	4	14	14
8TH...	2,374	1,279	53.9	1,104	100	75	131	131
AR,E....	195	148	75.8	132	5	11	32	32
AR,W....	62	43	69.4	33	7	3	19	19
IA,N....	144	106	73.6	106	0	0	7	7
IA,S....	132	58	43.9	45	12	1	3	3
MN.....	419	169	40.3	141	15	13	1	1
MO,E....	466	289	62.0	267	10	12	31	31
MO,W....	450	277	61.6	248	19	10	11	11
NE.....	142	49	34.5	42	5	2	11	11
ND.....	175	49	28.0	41	6	2	6	6
SD.....	189	91	48.1	49	21	21	4	4
9TH...	5,672	1,844	32.5	1,195	467	182	231	231
AK.....	153	37	24.2	25	1	11	5	5
AZ.....	1,416	394	27.8	218	99	77	45	45
CA,N....	180	81	45.0	42	37	2	6	6
CA,E....	627	195	31.1	82	80	33	3	3
CA,C....	1,849	574	31.0	491	68	15	80	80
CA,S....	85	27	31.8	20	7	0	5	5
HI.....	173	45	26.0	29	13	3	0	0
ID.....	135	33	24.4	23	8	2	8	8
MT.....	121	57	47.1	35	17	5	19	19
NV.....	419	201	48.0	133	51	17	22	22
OR.....	384	171	44.5	77	77	17	8	8
WA,E....	61	20	32.8	11	3	0	26	26
WA,W....	33	7	21.2	2	5	0	4	4
GUAM....	31	2	6.5	1	1	0	0	0
NMI.....	1	0		0	0	0	0	0
10TH..	2,435	1,144	47.0	824	186	134	183	166
CO.....	413	207	50.1	174	32	1	10	11
KS.....	269	144	53.5	126	6	12	49	49
NM.....	821	385	46.9	179	108	102	27	27
OK,N....	233	151	64.8	144	7	0	4	4
OK,E....	76	22	28.9	10	7	5	6	6
OK,W....	277	155	56.0	126	16	13	38	14
UT.....	301	65	21.6	96	8	1	26	26
WY.....	45	15	33.3	13	2	0	3	3
11TH..	5,360	1,950	36.4	1,413	221	304	166	111
AL,N....	299	60	20.1	55	3	2	42	41
AL,M....	250	40	16.0	27	5	4	6	1
AL,S....	188	74	39.4	28	37	8	4	4
FL,N....	293	86	29.4	64	11	11	4	4
FL,M....	1,110	343	30.9	280	49	34	51	49
FL,S....	2,210	817	37.0	552	59	206	17	11
GA,N....	645	383	59.4	319	43	21	8	8
GA,M....	126	52	41.3	41	8	3	17	17
GA,S....	237	93	39.2	65	8	20	10	1

* EXCLUDES THE DISTRICT OF COLUMBIA.

** EXCLUDES RULE 40S TRANSFERRED TO THE DISTRICT OF COLUMBIA.

TABLE H-7
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DETENTION SUMMARY
(INCLUDES RULE 40 TRANSFERS RECEIVED)**
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1980

CIRCUIT AND DISTRICT	PSA CASES CLOSED	TOTAL DETENTION COST	BEFORE INITIAL HEARING			AFTER INITIAL HEARING			POST ADJUDICATION		
			DEF	DAYS	COST	DEF	DAYS	COST	DEF	DAYS	COST
TOTAL	25,774	$30,324,308	8,455	26,465	$1,158,374	11,573	785,157	$27,058,042	4,473	324,728	$1,107,892
1ST	1,138	$1,418,155	290	579	$26,222	700	44,932	$1,080,906	233	17,252	$310,947
ME	90	$100,470	57	100	$3,729	29	1,493	$53,341	14	1,167	$43,400
MA	203	$496,118	63	204	$10,134	111	12,051	$473,100	4	164	$6,884
NH	28	$61,300	5	13	$824	12	1,005	$48,022	10	292	$12,714
RI	11	$8,247	1	2	$110	8	44	$2,147	2	106	$6,085
PR	707	$753,880	133	252	$9,830	543	29,939	$504,376	203	15,578	$243,864
2ND	835	$1,070,715	220	423	$21,078	278	14,148	$700,230	104	7,491	$349,407
CT	129	$300,002	23	40	$3,766	49	6,429	$237,588	20	1,083	$59,337
NY,N	43	$107,195	11	17	$723	24	2,010	$88,252	10	446	$16,170
NY,E	7	$4,184	7	7	$308	7	30	$3,876	0	0	$0
NY,S	235	$280,856	84	115	$5,175	96	3,429	$155,503	37	2,665	$120,188
NY,W	123	$166,515	40	84	$5,508	55	1,000	$122,573	8	560	$37,085
VT	98	$211,072	63	152	$5,498	57	2,254	$90,097	20	2,797	$114,677
3RD	1,074	$2,785,818	331	1,738	$54,810	550	32,448	$1,096,507	263	20,898	$1,034,501
DE	79	$225,390	13	23	$1,140	38	3,562	$185,040	20	1,184	$59,200
NJ	211	$286,483	28	54	$2,513	48	4,078	$168,310	27	2,790	$115,660
PA,E	572	$949,435	57	301	$8,106	102	11,240	$504,436	67	6,834	$338,895
PA,M	121	$17,100	15	43	$1,387	28	1,141	$37,501	14	1,235	$38,212
PA,W	325	$850,687	27	335	$3,687	97	6,840	$487,391	84	5,893	$359,609
VI	365	$306,733	191	982	$39,979	146	5,587	$233,829	51	2,962	$122,935
4TH	2,008	$1,426,853	319	1,106	$31,612	640	41,251	$1,054,479	218	14,054	$340,762
MD	890	$571,583	88	147	$5,445	214	13,707	$383,633	125	7,638	$182,505
NC,E	221	$138,778	28	164	$4,736	60	3,845	$86,433	16	1,470	$39,110
NC,M	203	$198,309	30	70	$1,421	85	7,340	$141,452	27	2,023	$49,430
NC,W	614	$260,331	71	203	$7,006	137	9,684	$246,957	5	250	$6,368
SC	113	$80,415	43	181	$3,973	64	2,291	$45,083	25	1,634	$31,359
VA,E	14	$31,260	5	17	$564	11	606	$18,345	4	168	$11,351
VA,W	110	$83,764	35	155	$6,686	38	2,162	$70,114	3	258	$6,864
WV,N	50	$0	0	0	$0	0	0	$0	0	0	$0
WV,S	194	$61,412	19	89	$2,275	31	1,816	$45,462	13	803	$13,675
5TH	4,433	$5,398,471	2,018	6,723	$211,807	2,226	110,334	$3,052,424	720	46,969	$1,334,240
LA,E	511	$643,068	101	143	$6,438	166	8,849	$386,576	91	5,753	$250,055
LA,W	87	$17,336	15	30	$560	11	995	$16,776	0	0	$0
LA,M	142	$84,231	26	123	$2,736	51	2,531	$57,313	13	1,530	$34,180
MS,N	88	$8,277	5	42	$1,230	6	274	$4,832	6	183	$3,115
MS,S	134	$43,629	18	30	$2,314	27	2,419	$36,172	1	291	$4,143
TX,N	862	$1,048,120	306	711	$24,387	368	22,681	$787,675	124	8,979	$237,058
TX,E	135	$269,047	41	97	$1,653	71	5,473	$180,085	20	2,566	$77,300
TX,S	1,326	$1,820,616	762	3,507	$102,350	976	47,428	$1,322,188	290	14,460	$406,378
TX,W	1,068	$1,443,846	823	2,034	$69,137	952	27,684	$1,050,701	158	8,107	$324,002
6TH	2,489	$2,365,168	384	1,216	$44,507	880	48,830	$1,715,868	246	17,281	$604,682
KY,E	180	$232,305	58	106	$5,181	78	6,251	$180,408	26	2,130	$66,886
KY,W	213	$189,884	22	102	$2,860	80	6,138	$176,000	8	382	$10,736
MI,E	825	$438,634	64	132	$5,119	194	17,267	$864,382	56	6,002	$166,533
MI,W	200	$83,888	24	54	$7,676	35	2,016	$56,065	23	1,153	$29,325
OH,N	511	$509,479	68	147	$5,373	140	9,581	$411,779	52	4,278	$162,327
OH,S	184	$101,935	75	164	$4,875	90	2,996	$77,537	48	3,961	$109,563
TN,E	153	$87,239	30	43	$1,769	48	1,575	$66,206	10	904	$29,194
TN,M	70	$124,753	41	358	$10,471	47	2,828	$110,762	1	110	$3,520
TN,W	16	$7,290	2	10	$640	9	96	$1,950	3	160	$4,800

TABLE M-7
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DETENTION SUMMARY
(INCLUDES RULE 40 TRANSFERS RECEIVED)**
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	TOTAL DETENTION COST	BEFORE INITIAL HEARING			AFTER INITIAL HEARING			POST ADJUDICATION		
			DEF	DAYS	COST	DEF	DAYS	COST	DEF	DAYS	COST
7TH...	1,784	$3,555,673	457	1,384	$109,815	618	60,996	$2,309,485	384	25,630	$1,136,373
IL,N....	785	$1,686,519	260	310	$64,268	283	31,562	$1,022,801	186	13,946	$519,350
IL,C....	33	$68,547	20	60	$2,827	10	756	$34,985	6	503	$30,725
IL,S....	183	$168,502	27	187	$6,656	33	2,952	$117,153	24	1,178	$44,693
IN,N....	294	$602,334	51	403	$22,611	80	8,452	$301,180	56	3,593	$186,543
IN,S....	221	$311,996	20	42	$1,243	55	7,885	$301,908	5	282	$8,847
WI,E....	181	$450,802	24	83	$4,203	76	5,026	$261,264	59	3,597	$185,115
WI,W....	147	$287,171	55	209	$8,007	72	4,363	$180,084	46	2,441	$99,100
8TH...	1,771	$2,209,953	365	1,520	$42,648	644	36,761	$1,955,104	266	16,716	$612,201
AR,E....	142	$65,945	15	81	$1,947	33	2,228	$61,490	2	82	$2,508
AR,W....	87	$47,628	31	78	$1,654	35	1,952	$44,182	1	64	$1,792
IA,N....	84	$106,556	20	25	$1,064	14	841	$46,521	17	1,484	$63,974
IA,S....	79	$65,533	5	20	$868	35	1,189	$53,955	7	238	$10,710
MN....	337	$816,590	75	177	$10,120	139	11,341	$678,373	33	2,238	$121,087
MO,E....	206	$245,371	10	335	$484	86	4,417	$189,247	17	863	$45,640
MO,W....	359	$397,535	78	153	$3,804	136	7,284	$188,450	104	7,508	$705,272
NE....	146	$83,461	13	149	$4,092	20	974	$47,654	15	845	$41,715
ND....	157	$206,823	62	318	$13,259	66	3,262	$143,371	21	1,247	$50,183
SD....	194	$161,508	56	186	$5,356	80	3,153	$92,852	49	2,036	$63,300
9TH..	4,034	$8,621,824	1,544	4,487	$215,050	2,214	134,264	$5,432,881	1,003	88,368	$2,913,893
AK....	165	$275,646	47	110	$8,737	26	1,537	$172,658	23	1,134	$94,251
AZ....	1,147	$2,508,785	596	1,373	$154,619	601	43,518	$1,786,389	244	22,038	$568,567
CA,N....	6	$1,856	1	3	$177	3	37	$1,679	0	0	$0
CA,E....	504	$587,512	221	1,476	$18,167	222	10,423	$389,586	85	12,620	$179,758
CA,C....	1,235	$2,470,831	124	296	$31,755	650	51,168	$1,539,048	389	28,375	$900,036
CA,S....	0	$0	0	0	$0	0	0	$0	0	0	$0
HI....	149	$430,604	62	163	$9,206	70	5,135	$264,771	36	3,016	$156,627
ID....	135	$176,356	36	121	$2,148	37	1,821	$68,104	23	1,674	$105,506
MT....	80	$121,136	44	211	$7,634	48	2,240	$79,814	20	965	$33,710
NV....	316	$596,145	131	365	$16,843	136	5,871	$308,119	61	4,905	$272,183
OR....	280	$1,438,212	174	329	$23,462	204	12,385	$817,088	110	12,427	$587,642
WA,E....	0	$0	0	0	$0	0	0	$0	0	0	$0
WA,W....	3	$8,567	3	3	$137	3	53	$1,855	1	188	$6,580
GUAM....	20	$2,340	4	31	$1,300	0	0	$0	1	26	$1,040
NMI....	1	$2,840	1	2	$80	1	69	$2,760	0	0	$0
10TH..	1,841	$2,818,311	664	2,648	$119,647	864	53,446	$1,702,178	314	21,708	$794,491
CO....	242	$232,796	53	81	$3,862	100	3,633	$177,065	31	1,336	$51,849
KS....	185	$188,529	36	102	$3,753	54	2,215	$82,778	30	1,705	$72,998
NM....	644	$1,588,461	389	1,614	$68,067	424	31,650	$867,989	131	11,287	$511,385
OK,N....	201	$137,382	14	25	$653	63	3,827	$126,404	5	413	$10,325
OK,E....	82	$67,623	13	36	$1,270	24	871	$35,611	14	768	$30,742
OK,W....	218	$126,034	50	82	$869	108	4,462	$64,261	62	4,208	$60,884
UT....	227	$265,751	88	798	$16,647	85	6,098	$196,016	37	1,899	$53,006
WY....	42	$28,781	21	130	$3,486	6	629	$22,055	4	92	$3,220
11TH..	2,956	$7,855,361	1,026	4,633	$221,178	2,149	178,146	$5,957,798	714	48,361	$1,676,385
AL,N....	280	$130,933	18	64	$1,004	31	5,792	$174,199	5	149	$5,330
AL,M....	221	$54,595	27	50	$816	46	2,206	$38,403	10	648	$15,276
AL,S....	172	$101,696	75	111	$1,688	99	6,404	$70,487	45	2,214	$79,521
FL,N....	221	$303,086	52	331	$8,897	112	8,742	$248,519	30	1,786	$43,870
FL,M....	837	$1,743,091	234	831	$28,200	451	43,278	$1,464,144	89	8,327	$250,747
FL,S....	1,571	$4,576,343	1,146	2,876	$147,238	1,004	88,561	$3,332,038	418	27,046	$1,087,066
GA,N....	385	$664,857	180	534	$23,785	209	15,085	$403,585	70	4,521	$147,487
GA,M....	106	$88,462	20	65	$1,976	38	1,886	$67,170	7	294	$10,316
GA,S....	173	$211,098	64	271	$6,673	79	6,192	$128,253	39	3,075	$79,772

* EXCLUDES THE DISTRICT OF COLUMBIA.

** EXCLUDES RULE 40S TRANSFERRED TO THE DISTRICT OF COLUMBIA.

TABLE M-8
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
BAIL VIOLATIONS REPORTED
(INCLUDES RULE 40 TRANFERS RECEIVED)
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS RELEASED ON BAIL		DEFENDANTS WITH BAIL VIOLATIONS		TOTAL VIOLATIONS REPORTED	TYPE OF VIOLATION REPORTED						WHEN OCCURRED		
		TOTAL	PCT.	TOTAL	PCT.		FELONY	MISDEMEANOR	FAILURE TO APPEAR	REPORTING	USE OF DRUGS	OTHER	PRE-ADJUDICATION	PRESENCE	PENDING APPEAL SURRENDER
TOTAL...	25,742	17,885	69.4	1,594	6.2	1,981	299	171	443	256	585	227	1,309	617	55
1ST...	1,137	6.3	94.8	73	6.4	93	7	3	13	24	31	15	65	26	2
ME.....	89	78	87.6	3	3.4	4	1	1	0	2	0	0	3	1	0
MA.....	292	230	78.8	23	7.9	27	2	2	8	12	2	1	21	6	0
NH.....	38	24	63.2	2	5.3	5	0	0	1	3	0	1	5	0	0
RI.....	11	10	90.9	2	18.2	2	0	0	2	0	0	0	2	0	0
PR.....	707	281	39.7	43	6.1	55	4	0	2	7	29	13	34	19	2
2ND...	635	480	75.6	47	7.4	60	18	9	19	4	4	6	37	20	3
CT.....	129	101	78.3	8	6.2	10	1	0	2	0	4	3	5	4	1
NY,N....	43	26	60.5	3	7.0	3	2	0	1	0	0	0	3	0	0
NY,E....	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NY,S....	235	182	77.4	22	9.4	28	10	5	9	3	0	1	24	4	0
NY,W....	123	110	89.4	10	8.1	13	4	4	4	1	0	0	2	9	2
VT.....	98	61	62.2	4	4.1	6	1	0	3	0	0	2	3	3	0
3RD...	1,673	1,261	75.4	124	7.4	148	28	14	23	29	26	28	106	38	4
DE.....	79	51	64.6	2	2.5	2	0	0	2	0	0	0	2	0	0
NJ.....	211	191	90.5	17	8.1	23	5	5	3	7	0	3	14	8	1
PA,E....	573	449	78.4	23	4.0	27	5	1	6	8	3	4	18	7	2
PA,M....	121	104	86.0	2	1.7	2	0	0	0	0	0	2	1	1	0
PA,W....	324	247	76.2	23	7.1	29	7	5	1	5	8	3	19	10	0
VI.....	365	219	60.0	57	15.6	65	11	3	11	9	15	16	52	12	1
4TH...	2,007	1,707	85.1	164	8.2	227	30	26	44	20	80	27	142	77	8
MD.....	689	638	92.7	83	12.0	118	8	11	25	16	52	6	84	31	3
NC,E....	221	193	87.3	11	5.0	18	5	3	3	1	4	2	9	7	2
NC,M....	203	150	73.9	19	9.4	22	1	3	6	0	11	2	12	11	0
NC,W....	413	319	77.2	23	5.6	26	5	4	3	3	3	8	13	11	2
SC.....	113	89	78.8	8	7.1	10	2	0	3	0	3	2	6	4	0
VA,E....	14	6	42.9	1	7.1	3	1	0	0	0	0	2	0	3	0
VA,W....	110	97	88.2	11	10.0	18	5	4	4	0	2	3	13	5	0
WV,N....	50	37	74.0	0	.0	0	0	0	0	0	0	0	0	0	0
WV,S....	194	177	91.2	8	4.1	11	3	1	0	0	5	2	5	5	1
5TH...	4,428	3,026	68.3	246	5.6	318	40	22	67	32	141	16	207	105	6
LA,E....	511	391	76.5	42	8.2	56	4	4	3	3	40	2	33	20	3
LA,M....	67	58	86.6	2	3.0	2	1	0	1	0	0	0	2	0	0
LA,W....	142	119	83.8	1	.7	1	1	0	0	0	0	0	0	1	0
MS,N....	68	64	94.1	10	14.7	14	4	9	1	0	0	0	9	5	0
MS,S....	134	111	82.8	7	5.2	8	4	1	2	1	0	0	7	1	0
TX,N....	862	450	68.0	68	10.3	89	10	3	15	11	44	6	56	31	2
TX,E....	135	115	85.2	15	11.1	25	3	0	1	4	15	2	23	1	1
TX,S....	1,321	611	46.3	32	2.4	36	2	3	21	5	5	0	23	13	0
TX,W....	1,388	1,107	79.8	69	5.0	87	11	2	23	8	37	6	54	33	0
6TH...	2,484	2,077	83.6	106	4.3	125	28	16	25	12	28	16	80	41	4
KY,E....	199	134	67.3	17	8.5	18	5	4	0	1	6	2	10	8	0
KY,W....	213	173	81.2	13	6.1	18	3	4	2	1	8	0	8	10	0
MI,E....	921	778	84.5	43	4.7	52	9	5	12	8	12	6	35	13	4
MI,W....	200	165	82.5	5	2.5	5	1	0	2	0	1	1	4	1	0
OH,N....	510	471	92.4	12	2.4	14	6	0	4	1	0	3	12	2	0
OH,S....	184	151	82.1	2	1.1	2	0	0	1	0	0	1	0	2	0
TN,E....	163	139	85.3	7	4.3	8	0	0	3	1	1	3	7	1	0
TN,M....	78	54	69.2	6	7.7	7	4	3	0	0	0	0	3	4	0
TN,W....	16	12	75.0	1	6.3	1	0	0	1	0	0	0	1	0	0

TABLE M-8
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
BAIL VIOLATIONS REPORTED
(INCLUDES RULE 40 TRANFERS RECEIVED)
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS RELEASED ON BAIL		DEFENDANTS WITH BAIL VIOLATIONS		TOTAL VIOLATIONS REPORTED	TYPE OF VIOLATION REPORTED						WHEN OCCURRED		
		TOTAL	PCT.	TOTAL	PCT.		FELONY	MISD-EMEANOR	FAILURE TO APPEAR	REPORTING	USE OF DRUGS	OTHER	PRE-ADJUDICATION	PRE-SENTENCE	PENDING APPEAL SURRENDER
7TH...	1,786	1,377	77.1	107	6.0	147	25	24	36	23	25	14	92	47	8
IL,N....	777	608	78.2	65	8.4	87	16	19	30	15	1	6	53	27	7
IL,C....	33	24	72.7	1	3.0	3	0	0	0	0	3	0	3	0	0
IL,S....	163	141	86.5	6	3.7	7	2	0	4	1	0	0	6	1	0
IN,N....	254	186	73.2	10	3.9	11	4	1	1	0	4	1	8	2	1
IN,S....	221	163	73.8	1	.5	1	0	0	0	0	0	1	1	0	0
WI,E....	191	174	91.1	13	6.8	24	2	2	1	2	12	5	14	10	0
WI,W....	147	81	55.1	11	7.5	14	1	2	0	5	5	1	7	7	0
8TH...	1,770	1,311	74.1	152	8.6	206	30	19	15	28	83	31	118	85	3
AR,E....	142	117	82.4	5	3.5	5	1	0	1	1	2	0	4	1	0
AR,W....	67	47	70.1	1	1.5	1	0	0	0	1	0	0	1	0	0
IA,N....	64	55	85.9	4	6.3	5	3	0	1	0	0	1	2	3	0
IA,S....	79	68	86.1	14	17.7	21	2	1	3	7	5	3	15	6	0
MN.....	336	233	69.3	22	6.5	23	12	5	4	0	1	1	9	14	0
MO,E....	266	192	72.2	23	8.6	42	3	2	0	10	21	6	20	21	1
MO,W....	359	242	67.4	42	11.7	63	2	4	3	2	47	5	36	27	0
NE.....	146	123	84.2	3	2.1	4	1	0	0	1	0	2	3	1	0
ND.....	157	105	66.9	12	7.6	15	0	4	1	4	4	2	11	4	0
SD.....	154	129	83.8	26	16.9	27	6	3	2	2	3	11	17	8	2
9TH...	4,028	2,358	58.5	260	6.5	303	32	17	99	26	92	37	215	84	4
AK.....	145	119	82.1	9	6.2	13	2	3	2	0	3	3	9	4	0
AZ.....	1,141	622	54.5	90	7.9	95	8	1	59	10	5	12	81	14	0
CA,N....	6	3	50.0	1	16.7	3	2	0	0	1	0	0	2	1	0
CA,E....	504	236	46.8	26	5.2	28	3	3	6	3	8	6	16	11	2
CA,C....	1,234	675	54.7	40	3.2	45	4	1	12	4	22	2	25	19	1
CA,S....	0	0		0		0	0	0	0	0	0	0	0	0	0
HI.....	149	93	65.8	15	10.1	24	5	2	3	1	8	4	17	6	1
ID.....	135	111	82.2	5	3.7	7	1	4	2	0	0	0	7	0	0
MT.....	80	54	67.5	4	5.0	6	0	1	2	1	2	0	3	3	0
NV.....	312	250	80.1	41	13.1	51	5	2	6	4	31	3	32	19	0
OR.....	290	160	55.2	29	10.0	30	2	0	7	2	12	7	23	7	0
WA,E....	0	0		0		0	0	0	0	0	0	0	0	0	0
WA,W....	3	2	66.7	0	.0	0	0	0	0	0	0	0	0	0	0
GUAM....	28	28	100.0	0	.0	0	0	0	0	0	0	0	0	0	0
NMI.....	1	0	0	0	.0	0	0	0	0	0	0	0	0	0	0
10TH...	1,840	1,210	65.8	85	4.6	95	13	5	19	9	40	9	59	35	1
CO.....	241	188	78.0	5	2.1	5	1	0	1	1	0	2	5	0	0
KS.....	185	138	74.6	16	8.6	17	2	0	3	0	11	1	8	8	1
NB.....	644	354	55.0	34	5.3	35	7	4	12	5	4	3	19	16	0
OK,N....	201	145	72.1	7	3.5	11	1	1	1	0	8	0	11	0	0
OK,E....	82	63	76.8	5	6.1	8	1	0	0	0	5	0	4	2	0
OK,W....	218	130	59.6	11	5.0	14	1	0	0	1	10	2	6	8	0
UT.....	227	157	69.2	7	3.1	7	0	0	2	2	2	1	6	1	0
WY.....	42	35	83.3	0	.0	0	0	0	0	0	0	0	0	0	0
11TH...	3,954	2,435	61.6	230	5.8	259	48	16	83	49	35	28	188	59	12
AL,N....	280	220	78.6	12	4.3	14	3	2	2	3	1	3	12	1	1
AL,M....	221	185	83.7	2	.9	2	2	0	0	0	0	0	0	2	0
AL,S....	172	149	86.7	8	4.7	9	0	0	5	0	3	1	8	1	0
FL,N....	221	131	59.3	11	5.0	12	2	1	1	4	1	3	6	4	2
FL,M....	827	511	61.8	36	4.4	46	14	2	12	6	7	5	26	15	5
FL,S....	1,588	801	51.1	133	8.5	144	16	7	61	32	17	11	111	30	3
GA,N....	385	244	63.4	15	3.9	18	4	3	2	4	1	4	15	3	0
GA,M....	106	84	79.2	6	5.7	7	0	0	0	0	0	1	6	1	0
GA,S....	173	130	75.1	7	4.0	7	1	1	0	0	5	0	4	2	1

* EXCLUDES THE DISTRICT OF COLUMBIA.

TABLE M-9
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS WITH BAIL VIOLATIONS
(INCLUDES RULE 40 TRANFERS RECEIVED)
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS RELEASED ON BAIL		DEFENDANTS WITH BAIL VIOLATIONS		TYPE OF VIOLATION **									
						FELONY		MISDEMEANOR		FAILURE TO APPEAR		REPORTING		USE OF DRUG		OTHER	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL...	25,742	17,885	69.4	1,594	8.2	284	1.1	155	.6	433	1.7	233	.9	436	1.7	209	.8
1ST...	1,137	623	54.8	73	6.4	7	.6	2	.2	13	1.1	21	1.8	23	2.0	13	1.1
ME.....	89	78	87.6	3	3.4	1	1.1	1	1.1	-	-	1	1.1	-	-	-	-
MA.....	292	230	78.8	23	7.9	2	.7	1	.3	8	2.7	11	3.8	2	.7	1	.3
NH.....	38	24	63.2	2	5.3	-	-	-	-	1	2.6	2	5.3	-	-	1	2.6
RI.....	11	10	90.9	2	18.2	-	-	-	-	2	18.2	-	-	-	-	-	-
PR.....	707	281	39.7	43	6.1	4	.6	-	-	2	.3	7	1.0	21	3.0	11	1.6
2ND...	635	480	75.6	47	7.4	17	2.7	8	1.3	18	3.0	4	.6	4	.6	5	.8
CT.....	129	101	78.3	8	6.2	1	.8	-	-	.2	1.6	-	-	4	3.1	3	2.3
NY,N....	43	26	60.5	3	7.0	2	4.7	-	-	1	2.3	-	-	-	-	-	-
NY,E....	7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NY,S....	235	182	77.4	22	9.4	9	3.8	5	2.1	9	3.6	3	1.3	-	-	-	-
NY,W....	123	110	89.4	10	8.1	4	3.3	3	2.4	4	3.3	1	.8	-	-	1	.4
VT.....	98	61	62.2	4	4.1	1	1.0	-	-	3	3.1	-	-	-	-	1	1.0
3RD...	1,673	1,261	75.4	124	7.4	28	1.7	14	.8	22	1.3	28	1.7	20	1.2	25	1.5
DE.....	79	51	64.6	2	2.5	-	-	-	-	2	2.5	-	-	-	-	-	-
NJ.....	211	191	90.5	17	8.1	5	2.4	5	2.4	3	1.4	6	2.8	-	-	3	1.4
PA,E....	573	449	78.4	23	4.0	5	.9	1	.2	6	1.0	8	1.4	3	.5	3	.5
PA,M....	121	104	86.0	2	1.7	-	-	-	-	-	-	-	-	-	-	2	1.7
PA,W....	324	247	76.2	23	7.1	7	2.2	5	1.5	1	.3	5	1.5	6	1.9	3	.9
VI.....	365	219	60.0	57	15.6	11	3.0	3	.8	10	2.7	9	2.5	11	3.0	14	3.8
4TH...	2,007	1,707	85.1	164	8.2	27	1.3	24	1.2	43	2.1	15	.7	53	2.6	23	1.1
MD.....	689	639	92.7	83	12.0	8	1.2	10	1.5	24	3.5	11	1.6	33	4.8	4	.6
NC,E....	221	193	87.3	11	5.0	5	2.3	3	1.4	3	1.4	1	.5	4	1.8	2	.9
NC,M....	203	150	73.9	19	9.4	1	.5	3	1.5	6	3.0	-	-	9	4.4	2	1.0
NC,W....	413	319	77.2	23	5.6	5	1.2	4	1.0	3	.7	3	.7	3	.7	8	1.9
SC.....	113	89	78.8	8	7.1	2	1.8	-	-	3	2.7	-	-	1	.9	2	1.8
VA,E....	14	6	42.9	1	7.1	1	7.1	-	-	-	-	-	-	-	-	1	7.1
VA,W....	110	97	88.2	11	10.0	2	1.8	3	2.7	4	3.6	-	-	1	.9	2	1.8
WV,N....	50	37	74.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
WV,S....	194	177	91.2	8	4.1	3	1.5	1	.5	-	-	-	-	2	1.0	2	1.0
5TH...	4,428	3,026	68.3	246	5.6	39	.9	19	.4	67	1.5	29	.7	102	2.3	16	.4
LA,E....	511	391	76.5	42	8.2	4	.8	4	.8	3	.6	3	.6	28	5.5	2	.4
LA,M....	67	58	86.6	2	3.0	1	1.5	-	-	1	1.5	-	-	-	-	-	-
LA,W....	142	119	83.8	1	.7	1	.7	-	-	-	-	-	-	-	-	-	-
MS,N....	68	64	94.1	10	14.7	4	5.9	6	8.8	1	1.5	-	-	-	-	-	-
MS,S....	134	111	82.8	7	5.2	4	3.0	1	.7	2	1.5	1	.7	-	-	-	-
TX,N....	862	450	88.0	68	10.3	9	1.4	3	.5	15	2.3	11	1.7	32	4.8	6	.9
TX,E....	135	115	85.2	15	11.1	3	2.2	-	-	1	.7	2	1.5	8	5.9	2	1.5
TX,S....	1,321	811	46.3	32	2.4	2	.2	3	.2	21	1.6	5	.4	4	.3	-	-
TX,W....	1,388	1,107	79.8	69	5.0	11	.8	2	.1	23	1.7	7	.5	30	2.2	6	.4
6TH...	2,484	2,077	83.6	106	4.3	27	1.1	13	.5	24	1.0	12	.5	23	.9	14	.6
KY,E....	199	134	67.3	17	8.5	5	2.5	4	2.0	-	-	1	.5	5	2.5	2	1.0
KY,W....	213	173	81.2	13	6.1	3	1.4	3	1.4	2	.9	1	.5	4	1.9	-	-
MI,E....	921	778	84.5	43	4.7	8	.9	3	.3	11	1.2	8	.9	12	1.3	6	.7
MI,W....	200	165	82.8	5	2.5	1	.5	-	-	2	1.0	-	-	1	.5	1	.5
OH,N....	510	471	92.4	12	2.4	6	1.2	-	-	4	.8	1	.2	-	-	2	.4
OH,S....	184	151	82.1	2	1.1	-	-	-	-	1	.5	-	-	-	-	1	.5
TN,E....	163	139	85.3	7	4.3	-	-	-	-	3	1.8	1	.6	1	.6	2	1.2
TN,M....	78	54	69.2	6	7.7	4	5.1	3	3.8	-	-	-	-	-	-	-	-
TN,W....	16	12	75.0	1	6.3	-	-	-	-	1	6.3	-	-	-	-	-	-

TABLE M-9
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS WITH BAIL VIOLATIONS
(INCLUDES RULE 40 TRANSFERS RECEIVED)
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS RELEASED ON BAIL		DEFENDANTS WITH BAIL VIOLATIONS		TYPE OF VIOLATION **									
						FELONY		MISDEMEANOR		FAILURE TO APPEAR		REPORTING		USE OF DRUG		OTHER	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
7TH...	1,786	1,377	77.1	107	8.0	22	1.2	21	1.2	34	1.9	22	1.2	15	.8	13	.7
IL,N....	777	608	78.2	66	8.4	14	1.8	16	2.1	20	2.6	15	1.9	1	.1	6	.8
IL,C....	33	24	72.7	1	3.0	-	-	-	-	-	-	-	-	1	3.0	-	-
IL,S....	183	141	86.5	6	3.7	1	.6	-	-	4	2.5	1	.6	-	-	-	-
IN,N....	294	186	73.2	10	3.9	4	1.6	1	.4	1	.4	-	-	3	1.2	1	.4
IN,S....	221	163	73.8	1	.5	-	-	-	-	-	-	-	-	-	-	1	.5
WI,E....	191	174	91.1	13	6.8	2	1.0	2	1.0	1	.5	2	1.0	6	3.1	4	2.1
WI,W....	147	81	55.1	11	7.5	1	.7	2	1.4	-	-	4	2.7	4	2.7	1	.7
8TH...	1,770	1,311	74.1	152	8.6	29	1.6	17	1.0	14	.8	23	1.3	55	3.1	29	1.6
AR,E....	142	117	82.4	5	3.5	1	.7	-	-	1	.7	1	.7	2	1.4	-	-
AR,W....	67	47	70.1	1	1.5	-	-	-	-	-	-	1	1.5	-	-	-	-
IA,N....	64	55	85.9	4	6.3	2	3.1	-	-	1	1.6	-	-	-	-	1	1.6
IA,S....	79	68	86.1	14	17.7	2	2.5	1	1.3	2	2.5	5	6.3	4	5.1	3	3.8
MN.....	236	233	98.3	22	6.5	12	3.6	5	1.5	4	1.2	-	-	1	.3	1	.3
MO,E....	266	192	72.2	23	8.6	3	1.1	2	.8	-	-	8	3.0	12	4.5	4	1.5
MO,W....	359	242	67.4	42	11.7	2	.6	2	.6	3	.8	2	.6	30	8.4	5	1.4
NE.....	146	123	84.2	3	2.1	1	.7	-	-	-	-	1	.7	-	-	1	.7
ND.....	157	105	66.9	12	7.6	-	-	4	2.5	1	.6	3	1.9	3	1.9	2	1.3
SD.....	154	129	83.8	26	16.9	6	3.9	3	1.9	2	1.3	2	1.3	3	1.9	11	7.1
9TH...	4,028	2,358	58.5	260	6.5	30	.7	16	.4	96	2.4	26	.6	74	1.8	36	.9
AK.....	145	119	82.1	9	6.2	2	1.4	3	2.1	1	.7	-	-	3	2.1	2	1.4
AZ.....	1,141	622	54.5	90	7.9	8	.7	1	.1	51	5.0	10	.9	5	.4	12	1.1
CA,N....	6	3	50.0	1	16.7	1	16.7	-	-	-	-	1	16.7	-	-	-	-
CA,E....	504	236	46.8	26	5.2	3	.6	3	.6	6	1.2	3	.6	7	1.4	6	1.2
CA,C....	1,234	675	54.7	40	3.2	4	.3	1	.1	12	1.0	4	.3	18	1.5	2	.2
CA,S....	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
HI.....	149	98	65.8	15	10.1	4	2.7	2	1.3	3	2.0	1	.7	5	3.4	4	2.7
ID.....	135	111	82.2	5	3.7	1	.7	3	2.2	2	1.5	-	-	-	-	-	-
MT.....	80	54	67.5	4	5.0	-	-	1	1.3	2	2.5	1	1.3	2	2.5	-	-
NV.....	312	250	80.1	41	13.1	5	1.6	2	.6	6	1.9	4	1.3	23	7.4	3	1.0
OR.....	290	160	55.2	29	10.0	2	.7	-	-	7	2.4	2	.7	11	3.8	7	2.4
WA,E....	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
WA,W....	3	2	66.7	-	-	-	-	-	-	-	-	-	-	-	-	-	-
GUAM....	28	28	100.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NMI.....	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10TH..	1,840	1,210	65.8	85	4.6	13	.7	5	.3	19	1.0	9	.5	34	1.8	9	.5
CO.....	241	188	78.0	5	2.1	1	.4	-	-	1	.4	1	.4	-	-	2	.8
KS.....	185	138	74.6	16	8.6	2	1.1	-	-	3	1.6	-	-	11	5.9	1	.5
NM.....	644	354	55.0	34	5.3	7	1.1	4	.6	12	1.9	5	.8	4	.6	3	.5
OK,N....	201	145	72.1	7	3.5	1	.5	1	.5	1	.5	-	-	5	2.5	-	-
OK,E....	82	63	76.8	5	6.1	1	1.2	-	-	-	-	-	-	4	4.9	-	-
OK,W....	218	130	59.6	11	5.0	1	.5	-	-	-	-	1	.5	8	3.7	2	.9
UT.....	227	157	69.2	7	3.1	-	-	-	-	2	.9	2	.9	2	.9	1	.4
WY.....	42	35	83.3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11TH..	3,954	2,435	61.6	230	5.8	45	1.1	16	.4	82	2.1	44	1.1	33	.8	27	.7
AL,N....	280	220	78.6	12	4.3	3	1.1	2	.7	2	.7	3	1.1	1	.4	3	1.1
AL,M....	221	195	88.2	2	.9	2	.9	-	-	-	-	-	-	-	-	-	-
AL,S....	172	118	68.2	8	4.7	-	-	-	-	5	2.9	-	-	2	1.2	1	.6
FL,N....	221	131	59.3	11	5.0	2	.9	1	.5	1	.5	4	1.8	1	.5	3	1.4
FL,M....	827	511	61.8	36	4.4	12	1.5	2	.2	11	1.3	4	.5	7	.8	5	.6
FL,S....	1,988	801	51.1	133	8.5	16	1.0	7	.4	61	3.9	31	2.0	16	1.0	11	.7
GA,N....	385	244	63.4	15	3.9	4	1.0	3	.8	2	.5	2	.5	1	.3	3	.8
GA,M....	106	84	79.2	6	5.7	5	4.7	-	-	-	-	-	-	-	-	1	.9
GA,S....	173	130	75.1	7	4.0	1	.6	1	.6	-	-	-	-	5	2.9	-	-

* EXCLUDES THE DISTRICT OF COLUMBIA.

** DEFENDANTS MAY COMMIT MORE THAN ONE TYPE OF VIOLATION WHILE ON RELEASE.

TABLE M-10A
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS IN PREVENTIVE DETENTION
WHO ARE DETAINED OR RELEASED AFTER CONVICTION
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS IN PREVENTIVE DETENTION		FROM PREVENTIVE TO TEMPORARY DETENTION		RELEASED PRIOR TO CONVICTION		DEFENDANTS CONVICTED		RELEASED AFTER CONVICTED		DETAINED AFTER CONVICTED	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL...	25,742	5,170	20.0	5	.0	497	9.6	3,977	76.9	338	8.5	3,639	70.3
1ST...	1,137	293	25.7	-		20	6.8	231	78.8	16	5.4	215	73.3
ME.....	89	15	16.8	-		4	26.6	11	73.3	4	26.6	7	46.6
MA.....	292	64	21.9	-		8	12.5	52	81.2	8	12.5	44	68.7
NH.....	38	6	15.7	-		-		5	83.3	-		5	83.3
RI.....	11	2	18.1	-		1	50.0	1	50.0	1	50.0	-	.0
PR.....	707	206	29.1	-		7	3.3	162	76.6	3	1.4	159	77.1
2ND...	635	115	18.1	-		7	6.0	80	69.5	4	3.4	76	66.0
CT.....	129	17	13.1	-		1	5.8	14	82.3	1	5.8	13	76.4
NY,N....	43	11	25.5	-		-		7	63.6	-		7	63.6
NY,E....	7	6	85.7	-		-		-		-		-	.0
NY,S....	235	39	16.5	-		5	12.8	30	76.9	3	7.6	27	69.2
NY,W....	123	5	4.0	-		-		-		-		-	.0
VT.....	98	37	37.7	-		1	2.7	29	78.3	-		29	78.3
3RD...	1,673	267	15.9	1	.0	33	12.3	213	79.7	22	8.2	191	71.5
DE.....	79	20	25.3	-		1	5.0	15	75.0	-		15	75.0
NJ.....	211	26	12.3	-		3	11.5	24	92.3	1	3.8	23	88.4
PA,E....	573	93	16.2	-		10	10.7	67	72.0	7	7.5	60	64.5
PA,M....	121	14	11.5	-		5	35.7	10	71.4	4	28.5	6	42.8
PA,W....	324	61	18.8	-		1	1.6	53	86.8	-		53	86.8
VI.....	365	53	14.5	1	.2	13	24.5	44	83.0	10	18.8	34	64.1
4TH...	2,007	310	15.4	-		41	13.2	239	77.0	23	7.4	216	69.6
MD.....	689	97	14.0	-		12	12.3	85	87.6	2	2.0	83	85.5
NC,E....	221	30	13.5	-		6	20.0	24	80.0	4	13.3	20	66.6
NC,M....	203	55	27.0	-		9	16.3	55	100.0	7	12.7	48	87.2
NC,W....	413	50	12.1	-		3	6.0	20	40.0	2	4.0	18	36.0
SC.....	113	29	25.6	-		4	13.7	17	58.6	3	10.3	14	48.2
VA,E....	14	6	42.8	-		1	16.6	5	83.3	1	16.6	4	66.6
VA,W....	110	11	10.0	-		1	9.0	9	81.8	-		9	81.8
WV,N....	50	13	26.0	-		-		9	69.2	-		9	69.2
WV,S....	194	19	9.7	-		5	26.3	15	78.9	4	21.0	11	57.8
5TH...	4,428	541	12.2	1	.0	52	9.6	390	72.0	38	7.0	352	65.0
LA,E....	511	115	22.5	-		12	10.4	96	83.4	11	9.5	85	73.9
LA,M....	67	5	7.4	-		-		2	40.0	-		2	40.0
LA,W....	142	21	14.7	-		2	9.5	12	57.1	1	4.7	11	52.3
MS,N....	68	3	4.4	-		-		2	66.6	-		2	66.6
MS,S....	134	15	11.1	-		3	20.0	11	73.3	2	13.3	9	60.0
TX,N....	662	85	12.8	1	.1	13	15.2	60	70.5	12	14.1	48	56.4
TX,E....	135	44	32.5	-		3	6.8	39	88.6	1	2.2	38	86.3
TX,S....	1,321	142	10.7	-		11	7.7	87	61.2	7	4.9	80	56.3
TX,W....	1,388	111	7.9	-		8	7.2	81	72.9	4	3.6	77	69.3
6TH...	2,484	423	17.0	-		51	12.0	287	67.8	31	7.3	256	60.5
KY,E....	199	56	28.1	-		1	1.7	43	76.7	1	1.7	42	75.0
KY,W....	213	50	23.4	-		11	22.0	36	72.0	5	10.0	31	62.0
MI,E....	921	127	13.7	-		17	13.3	73	57.4	11	8.6	62	48.8
MI,W....	200	46	23.0	-		-		28	60.8	-		28	60.8
OH,N....	510	61	11.9	-		10	16.3	44	72.1	4	6.5	40	65.5
OH,S....	184	37	20.1	-		2	5.4	30	81.0	2	5.4	28	75.6
TN,E....	163	24	14.7	-		3	12.5	15	62.5	2	8.3	13	54.1
TN,M....	78	21	26.9	-		7	33.3	20	95.2	6	28.5	14	66.6
TN,W....	16	1	6.2	-		-		-		-		-	.0

TABLE H-10A
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS IN PREVENTIVE DETENTION
WHO ARE DETAINED OR RELEASED AFTER CONVICTION
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS IN PREVENTIVE DETENTION		FROM PREVENTIVE TO TEMPORARY DETENTION		RELEASED PRIOR TO CONVICTION		DEFENDANTS CONVICTED		RELEASED AFTER CONVICTED		DETAINED AFTER CONVICTED	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
7TH...	1,786	341	19.0	-		38	11.1	267	78.2	29	8.5	238	69.7
IL,N....	777	144	18.5	-		18	12.5	124	86.1	11	7.6	113	78.4
IL,C....	33	10	30.3	-		3	30.0	9	90.0	2	20.0	7	70.0
IL,S....	163	23	14.1	-		-		12	52.1	-		12	52.1
IN,N....	254	42	16.5	-		6	14.2	31	73.8	6	14.2	25	59.5
IN,S....	221	35	15.8	-		5	14.2	25	71.4	5	14.2	20	57.1
WI,E....	191	38	19.8	-		3	7.8	33	86.8	2	5.2	31	81.5
WI,W....	147	49	33.3	-		3	6.1	33	67.3	3	6.1	30	61.2
8TH...	1,770	317	17.9	1	.0	29	9.1	206	64.9	19	5.9	187	58.8
AR,E....	142	10	7.0	-		1	10.0	8	80.0	-		8	80.0
AR,W....	67	19	28.3	-		-		14	73.6	-		14	73.6
IA,N....	64	8	12.5	1	1.5	1	12.5	7	87.5	1	12.5	6	75.0
IA,S....	79	5	6.3	-		-		4	80.0	-		4	80.0
MN.....	336	55	16.3	-		6	10.9	21	38.1	6	10.9	15	27.2
MO,E....	266	32	12.0	-		-		14	43.7	-		14	43.7
MO,W....	359	78	21.7	-		8	10.2	62	79.4	4	5.1	58	74.3
NE.....	146	17	11.6	-		1	5.8	12	70.5	-		12	70.5
ND.....	157	53	33.7	-		2	3.7	44	83.0	-		44	83.0
SD.....	154	40	25.9	-		10	25.0	20	50.0	8	20.0	12	30.0
9TH...	4,028	1,261	31.3	-		127	10.0	1,014	80.4	88	6.9	926	73.4
AK.....	145	17	11.7	-		3	17.6	13	76.4	4	23.5	9	52.9
AZ.....	1,141	228	19.9	-		17	7.4	185	81.1	4	1.7	181	79.3
CA,N....	6	1	16.6	-		-		-		-		-	.0
CA,E....	504	289	57.3	-		21	7.2	241	83.3	14	4.8	227	78.5
CA,C....	1,234	404	32.7	-		17	4.2	310	76.7	15	3.7	295	73.0
CA,S....	-	-		-		-		-		-		-	.0
HI.....	149	42	28.1	-		5	11.9	33	78.5	3	7.1	30	71.4
ID.....	135	20	14.8	-		3	15.0	12	60.0	2	10.0	10	50.0
MT.....	80	14	17.5	-		2	14.2	9	64.2	2	14.2	7	50.0
NV.....	312	87	27.8	-		22	25.2	66	75.8	16	18.3	50	57.4
OR.....	290	156	53.7	-		36	23.0	142	91.0	27	17.3	115	73.7
WA,E....	-	-		-		-		-		-		-	.0
WA,W....	3	1	33.3	-		-		1	100.0	-		1	100.0
GUAM....	28	2	7.1	-		1	50.0	2	100.0	1	50.0	1	50.0
NMI.....	1	-		-		-		-		-		-	.0
10TH..	1,840	486	26.4	1	.0	44	9.0	364	74.8	28	5.7	336	69.1
CO.....	241	48	19.9	1	.4	8	16.6	34	70.8	6	12.5	28	58.3
KS.....	185	38	20.5	-		1	2.6	22	57.8	1	2.6	21	55.2
NM.....	644	218	33.8	-		27	12.3	161	73.8	15	6.8	146	66.9
OK,N....	201	29	14.4	-		-		23	79.3	-		23	79.3
OK,E....	82	10	12.1	-		2	20.0	7	70.0	2	20.0	5	50.0
OK,W....	218	65	29.8	-		6	9.2	55	84.6	4	6.1	51	78.4
UT.....	227	75	33.0	-		-		59	78.6	-		59	78.6
WY.....	42	3	7.1	-		-		3	100.0	-		3	100.0
11TH..	3,954	816	20.6	1	.0	55	6.7	686	84.0	40	4.9	646	79.1
AL,N....	280	16	5.7	-		1	6.2	13	81.2	-		13	81.2
AL,M....	221	9	4.0	-		2	22.2	6	66.6	2	22.2	4	44.4
AL,S....	172	43	25.0	-		4	9.3	39	90.6	4	9.3	35	81.3
FL,N....	221	86	38.9	-		4	4.6	74	86.0	3	3.4	71	82.5
FL,M....	827	265	32.0	-		20	7.5	207	78.1	16	6.0	191	72.0
FL,S....	1,589	246	15.6	1	.0	15	6.0	218	88.6	10	4.0	208	84.5
GA,N....	385	109	28.3	-		3	2.7	93	85.3	1	.9	92	84.4
GA,M....	106	14	13.2	-		3	21.4	14	100.0	1	7.1	13	92.8
GA,S....	173	28	16.1	-		3	10.7	22	78.5	3	10.7	19	67.8

TABLE H-11A
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS IN RELEASED STATUS
WHO ARE DETAINED OR RELEASED AFTER CONVICTION
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS IN RELEASE STATUS		DETAINED PRIOR TO CONVICTION		PSA DEFENDANTS CONVICTED		RELEASED AFTER CONVICTED		DETAINED AFTER CONVICTED	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL...	25,742	17,935	69.6	7	.0	14,038	78.2	12,939	72.1	1,099	6.1
1ST...	1,137	592	52.0	-		455	76.8	451	76.1	4	.6
ME.....	89	72	80.8	-		61	84.7	60	83.3	1	1.3
MA.....	292	221	75.6	-		163	73.7	163	73.7	-	.0
NH.....	38	26	68.4	-		22	84.6	22	84.6	-	.0
RI.....	11	10	90.9	-		8	80.0	5	50.0	3	30.0
PR.....	707	263	37.1	-		201	76.4	201	76.4	-	.0
2ND...	835	482	72.7	-		344	74.4	291	62.9	53	11.4
CT.....	129	98	75.9	-		80	81.6	80	81.6	-	.0
NY,N....	43	28	65.1	-		25	89.2	24	85.7	1	3.5
NY,E....	7	-		-		-		-		-	.0
NY,S....	235	186	79.1	-		114	61.2	111	59.6	3	1.6
NY,W....	123	94	76.4	-		78	82.9	29	30.8	49	52.1
VT.....	98	56	57.1	-		47	83.9	47	83.9	-	.0
3RD...	1,673	1,262	75.4	-		961	76.1	843	66.7	118	9.3
DE.....	79	57	72.1	-		36	63.1	32	56.1	4	7.0
NJ.....	211	177	83.8	-		154	87.0	56	31.6	98	55.3
PA,E....	573	414	72.2	-		326	78.7	325	78.5	1	.2
PA,M....	121	92	76.0	-		79	85.8	73	79.3	6	6.5
PA,W....	324	253	78.0	-		223	88.1	214	84.5	9	3.5
VI.....	365	269	73.6	-		143	53.1	143	53.1	-	.0
4TH...	2,007	1,482	73.8	1	.0	1,252	84.4	944	63.6	308	20.7
MD.....	689	464	67.3	-		377	81.2	92	19.8	285	61.4
NC,E....	221	187	84.6	-		149	79.6	144	77.0	5	2.6
NC,M....	203	146	71.9	-		128	87.6	128	87.6	-	.0
NC,W....	413	313	75.7	1	.3	266	84.9	266	84.9	-	.0
SC.....	113	73	64.6	-		68	93.1	67	91.7	1	1.3
VA,E....	14	6	42.8	-		5	83.3	5	83.3	-	.0
VA,W....	110	91	82.7	-		76	83.5	75	82.4	1	1.0
WV,N....	50	33	66.0	-		30	90.9	30	90.9	-	.0
WV,S....	194	169	87.1	-		153	90.5	137	81.0	16	9.4
5TH...	4,428	2,934	66.2	-		2,323	79.1	2,258	76.9	65	2.2
LA,E....	511	396	77.4	-		345	87.1	341	86.1	4	1.0
LA,M....	67	59	88.0	-		52	88.1	52	88.1	-	.0
LA,W....	142	107	75.3	-		91	85.0	91	85.0	-	.0
MS,N....	68	66	97.0	-		61	92.4	59	89.3	2	3.0
MS,S....	134	111	82.8	-		86	77.4	86	77.4	-	.0
TX,N....	662	446	67.3	-		336	75.3	320	71.7	16	3.5
TX,E....	135	86	63.7	-		62	72.0	33	38.3	29	33.7
TX,S....	1,321	1,017	76.9	-		786	77.2	786	77.2	-	.0
TX,W....	1,368	646	46.5	-		504	78.0	490	75.8	14	2.1
6TH...	2,484	2,000	80.5	1	.0	1,492	74.6	1,178	58.9	314	15.7
KY,E....	199	139	69.8	-		118	84.8	118	84.8	-	.0
KY,W....	213	162	76.0	-		135	83.3	135	83.3	-	.0
MI,E....	921	783	85.0	-		424	54.1	422	53.8	2	.2
MI,W....	200	170	85.0	-		152	89.4	151	88.8	1	.6
OH,N....	810	412	50.7	1	.2	380	92.2	94	22.8	286	69.4
OH,S....	184	137	74.4	-		128	93.4	104	75.9	24	17.5
TN,E....	163	137	84.0	-		102	74.4	101	73.7	1	.7
TN,M....	78	48	62.8	-		46	95.8	46	95.8	-	.0
TN,W....	16	11	68.7	-		7	63.6	7	63.6	-	.0

TABLE M-11A
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS IN RELEASED STATUS
WHO ARE DETAINED OR RELEASED AFTER CONVICTION
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS IN RELEASE STATUS		DETAINED PRIOR TO CONVICTION		PSA DEFENDANTS CONVICTED		RELEASED AFTER CONVICTED		DETAINED AFTER CONVICTED	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
7TH...	1,786	1,306	73.1	1	.0	1,003	76.7	862	66.0	141	10.7
IL,N....	777	589	75.8	-		413	70.1	382	64.8	31	8.2
IL,C....	33	19	57.6	-		12	63.1	9	47.3	3	15.7
IL,S....	163	141	86.5	-		108	76.5	81	57.4	27	19.1
IN,N....	254	182	71.6	1	.5	152	83.5	152	83.5	-	.0
IN,S....	221	155	70.1	-		124	80.0	124	80.0	-	.0
WI,E....	191	123	64.3	-		112	91.0	35	28.4	77	62.6
WI,W....	147	97	65.9	-		82	84.5	79	81.4	3	3.0
8TH...	1,770	1,306	73.7	1	.0	1,065	81.5	1,013	77.5	52	3.8
AR,E....	142	120	84.5	-		103	85.8	102	85.0	1	.8
AR,W....	67	44	65.6	-		31	70.4	31	70.4	-	.0
IA,N....	64	53	82.8	-		41	77.3	41	77.3	-	.0
IA,S....	79	72	91.1	-		52	72.2	25	34.7	27	37.5
MN.....	336	210	62.5	-		190	90.4	190	90.4	-	.0
MO,E....	266	235	88.3	-		153	65.1	153	65.1	-	.0
MO,W....	359	242	67.4	-		225	92.9	210	86.7	15	6.1
NE.....	146	122	83.5	1	.8	106	86.8	105	86.0	1	.8
ND.....	157	99	63.0	-		70	70.7	70	70.7	-	.0
SD.....	154	109	70.7	-		94	86.2	86	78.8	8	7.3
9TH...	4,028	2,445	60.7	1	.0	1,945	79.5	1,931	78.9	14	.5
AK.....	145	111	76.5	-		75	67.5	71	63.9	4	3.6
AZ.....	1,141	781	68.4	-		610	78.1	609	77.9	1	.1
CA,N....	6	2	33.3	-		-		-		-	.0
CA,E....	504	162	32.1	-		119	73.4	118	72.8	1	.6
CA,C....	1,234	792	64.1	-		639	80.6	639	80.6	-	.0
CA,S....	-	-		-		-		-		-	.0
HI.....	149	87	58.3	-		64	73.5	61	70.1	3	3.4
ID.....	135	107	79.2	-		96	89.7	96	89.7	-	.0
MT.....	80	57	71.2	-		53	92.9	52	91.2	1	1.7
NV.....	312	210	67.3	1	.4	182	86.6	181	86.1	1	.4
OR.....	290	120	41.3	-		93	77.5	90	75.0	3	2.5
WA,E....	-	-		-		-		-		-	.0
WA,W....	3	2	66.6	-		2	100.0	2	100.0	-	.0
GUAM....	28	14	50.0	-		12	85.7	12	85.7	-	.0
NMI.....	1	-		-		-		-		-	.0
10TH..	1,840	1,287	69.9	2	.1	947	73.5	939	72.9	8	.6
CO.....	241	188	78.0	-		150	79.7	150	79.7	-	.0
KS.....	185	135	72.9	1	.7	117	86.6	117	86.6	-	.0
NM.....	844	415	64.4	-		220	53.0	219	52.7	1	.2
OK,N....	201	164	81.5	-		146	89.0	146	89.0	-	.0
OK,E....	82	64	78.0	-		48	75.0	43	67.1	5	7.8
OK,W....	218	131	60.0	-		106	80.9	104	79.3	2	1.5
UT.....	227	151	66.5	1	.6	129	85.4	129	85.4	-	.0
WY.....	42	39	92.8	-		31	79.4	31	79.4	-	.0
11TH..	3,954	2,859	72.3	-		2,251	78.7	2,229	77.9	22	.7
AL,N....	280	220	78.5	-		202	91.8	202	91.8	-	.0
AL,M....	221	204	92.3	-		175	85.7	166	81.3	9	4.4
AL,S....	172	124	72.0	-		106	85.4	106	85.4	-	.0
FL,N....	221	135	61.0	-		103	76.2	102	75.5	1	.7
FL,M....	827	526	63.6	-		418	79.4	417	79.2	1	.1
FL,S....	1,888	1,191	75.9	-		891	74.8	881	73.9	10	.8
GA,N....	385	255	66.2	-		210	82.3	209	81.9	1	.3
GA,M....	108	90	84.8	-		53	58.8	53	58.8	-	.0
GA,S....	173	114	65.8	-		93	81.5	93	81.5	-	.0

HIGHLIGHTS OF TABLES H-12C

Temporary Detention

Cases Closed	25,742
18 U.S.C. 3142 (d)	1,051 (4%)

The large majority of the districts reported fewer than 10 cases involving temporary detention. Only 15 districts reported 10 or more cases:

PR	235*	TXN	70	AK	10
PAE	15	TXS	121	AZ	105
PAW	11	TXW	103	KS	10
VI	16	MIE	20	FLM	33
NCW	18	MN	43	FLS	48

Four districts (Puerto Rico, Texas Southern, Texas Western, and Arizona) account for over half (54%) of the cases involving temporary detention in the system.

* The 235 temporary detention cases represent 33% of the 707 cases closed in Puerto Rico during the 12-month period. Puerto Rico alone accounts for 22% of the temporary detention cases in the system.

Reasons for Temporary Detention

Temporary Detention Cases	1,051
Defendant on pretrial release at time of arrest	153 (15%)
Defendant on probation or parole at time of arrest	318 (30%)
Defendant's citizenship/ INS status in question	580 (55%)

Puerto Rico and Arizona report questionable citizenship as the reason in virtually every case involving temporary detention. The other districts report a mixture of reasons.

Status After Temporary Detention

Released	264 (25%)
Detained*	709 (67%)
Dismissed/Pled Guilty	78 (7%)

* Includes preventive detention and inability to post money bail.

TABLE M-12C
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS IN TEMPORARY DETENTION
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES	IN TEMPORARY DETENTION		REASON DETAINED						DISPOSITION AFTER DETENTION							
				ON PRETRIAL RELEASE AT TIME OF CHARGE		ON PROBATION AT TIME OF CHARGE		CITIZENSHIP STATUS IN QUESTION		IN PREVENTIVE DETENTION		RELEASED		NO CHANGE		CASE DISMISSED/ PLED GUILTY	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL...	25,742	1,051	4.0	153	14.5	319	30.3	580	55.1	369	35.1	264	25.1	340	32.3	78	7.4
1ST...	1,137	240	21.1	3	1.2	5	2.0	232	96.6	140	58.3	31	12.9	50	20.8	19	7.9
ME.....	89	2	2.2	-		-		2	100.0	-		2	100.0	-	.0	-	.0
MA.....	292	2	.6	1	50.0	1	50.0	-		-		1	50.0	1	50.0	-	.0
NH.....	38	1	2.6	-		1	100.0	-		-		1	100.0	-	.0	-	.0
RI.....	11	-		-		-		-		-		-	.0	-	.0	-	.0
PR.....	707	235	33.2	2	.8	3	1.2	230	97.8	140	59.5	27	11.4	49	20.8	19	8.0
2ND...	635	18	2.8	6	33.3	6	33.3	6	33.3	3	16.6	6	33.3	8	44.4	1	5.5
CT.....	129	6	4.6	3	50.0	1	16.6	2	33.3	2	33.3	1	16.6	3	50.0	-	.0
NY,N....	43	1	2.3	1	100.0	-		-		-		-	.0	1	100.0	-	.0
NY,E....	7	-		-		-		-		-		-	.0	-	.0	-	.0
NY,S....	235	5	2.1	1	20.0	2	40.0	2	40.0	1	20.0	1	20.0	2	40.0	1	20.0
NY,W....	123	6	4.8	1	16.6	3	50.0	2	33.3	-		4	66.6	2	33.3	-	.0
VT.....	98	-		-		-		-		-		-	.0	-	.0	-	.0
3RD...	1,673	50	2.9	15	30.0	17	34.0	18	36.0	6	12.0	15	30.0	26	52.0	3	6.0
DE.....	79	-		-		-		-		-		-	.0	-	.0	-	.0
NJ.....	211	3	1.4	1	33.3	2	66.6	-		1	33.3	-	.0	1	33.3	1	33.3
PA,E....	573	15	2.6	3	20.0	6	40.0	6	40.0	3	20.0	7	46.6	3	20.0	2	13.3
PA,M....	121	5	4.1	2	40.0	2	40.0	1	20.0	1	20.0	4	80.0	-	.0	-	.0
PA,W....	324	11	3.3	6	54.5	4	36.3	1	9.0	1	9.0	1	9.0	9	81.8	-	.0
VI.....	365	16	4.3	3	18.7	3	18.7	10	62.5	-		3	18.7	13	81.2	-	.0
4TH..	2,007	44	2.1	23	52.2	15	34.0	6	13.6	8	18.1	26	59.0	10	22.7	-	.0
MD.....	889	2	.2	1	50.0	1	50.0	-		1	50.0	-	.0	1	50.0	-	.0
NC,E....	221	2	.9	-		2	100.0	-		1	50.0	1	50.0	-	.0	-	.0
NC,M....	203	-		-		-		-		-		-	.0	-	.0	-	.0
NC,W....	413	18	4.3	10	55.5	8	44.4	-		6	33.3	10	55.5	2	11.1	-	.0
SC.....	113	7	6.1	1	14.2	3	42.8	3	42.8	-		7	100.0	-	.0	-	.0
VA,E....	14	-		-		-		-		-		-	.0	-	.0	-	.0
VA,W....	110	4	3.6	1	25.0	1	25.0	2	50.0	-		3	75.0	1	25.0	-	.0
WV,N....	50	7	14.0	7	100.0	-		-		-		5	71.4	2	28.5	-	.0
WV,S....	194	4	2.0	3	75.0	-		1	25.0	-		-	.0	4	100.0	-	.0
5TH...	4,428	305	6.8	39	12.7	148	48.5	118	38.6	100	32.7	95	31.1	106	34.7	4	1.3
LA,E....	511	1	.1	-		1	100.0	-		-		-	.0	1	100.0	-	.0
LA,M....	67	1	1.4	-		1	100.0	-		-		-	.0	1	100.0	-	.0
LA,W....	142	1	.7	-		1	100.0	-		-		1	100.0	-	.0	-	.0
MS,N....	68	-		-		-		-		-		-	.0	-	.0	-	.0
MS,S....	134	5	3.7	4	80.0	1	20.0	-		2	40.0	-	.0	3	60.0	-	.0
TX,N....	862	70	10.5	8	11.4	37	52.8	25	35.7	28	40.0	13	18.5	29	41.4	-	.0
TX,E....	135	3	2.2	1	33.3	2	66.6	-		1	33.3	1	33.3	1	33.3	-	.0
TX,S....	1,321	121	9.1	13	10.7	43	35.5	65	53.7	51	42.1	22	18.1	47	38.8	1	.8
TX,W....	1,388	103	7.4	13	12.6	62	60.1	28	27.1	18	17.4	58	56.3	24	23.3	3	2.9
6TH...	2,484	50	2.0	8	16.0	23	46.0	19	38.0	11	22.0	10	20.0	29	58.0	-	.0
KY,E....	199	3	1.5	2	66.6	1	33.3	-		3	100.0	-	.0	-	.0	-	.0
KY,W....	213	4	1.8	-		3	75.0	1	25.0	-		1	25.0	3	75.0	-	.0
MI,E....	821	20	2.1	2	10.0	7	35.0	11	55.0	3	15.0	3	15.0	14	70.0	-	.0
MI,W....	200	-		-		-		-		-		-	.0	-	.0	-	.0
OH,N....	510	9	1.7	-		3	33.3	6	66.6	3	33.3	2	22.2	4	44.4	-	.0
OH,S....	184	1	.5	-		1	100.0	-		-		1	100.0	-	.0	-	.0
TN,E....	163	5	3.0			5	100.0	-		-		-	.0	5	100.0	-	.0
TN,M....	78	5	6.4	2	40.0	3	60.0	-		1	20.0	1	20.0	3	60.0	-	.0
TN,W....	16	3	18.7	2	66.6	-		1	33.3	1	33.3	2	66.6	-	.0	-	.0

TABLE H-12C
U.S. DISTRICT COURTS*
PRETRIAL SERVICES ACT
DEFENDANTS IN TEMPORARY DETENTION
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31,1988

CIRCUIT AND DISTRICT	PSA CASES	IN TEMPORARY DETENTION		REASON DETAINED						DISPOSITION AFTER DETENTION							
				ON PRETRIAL RELEASE AT TIME OF CHARGE		ON PROBATION AT TIME OF CHARGE		CITIZENSHIP STATUS IN QUESTION		IN PREVENTIVE DETENTION		RELEASED		NO CHANGE		CASE DISMISSED/ PLED GUILTY	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
7TH...	1,788	14	.7	4	28.5	0	64.2	1	7.1	3	21.4	2	14.2	8	57.1	1	7.1
IL,N....	777	3	.3	-		2	66.6	1	33.3	-		1	33.3	2	66.6	-	.0
IL,C....	33	2	6.0	-		3	100.0	-		-		1	50.0	1	50.0	-	.0
IL,S....	183	1	.6	1	100.0	-		-		-		-	.0	1	100.0	-	.0
IN,N....	254	1	.3	-		1	100.0	-		-		-	.0	-	.0	1	100.0
IN,S....	221	-		-		-		-		-		-	.0	-	.0	-	.0
WI,E....	191	5	2.6	2	40.0	3	60.0	-		2	40.0	-	.0	3	60.0	-	.0
WI,W....	147	2	1.3	1	50.0	1	50.0	-		1	50.0	-	.0	1	50.0	-	.0
8TH...	1,770	55	3.1	7	12.7	27	49.0	21	38.1	15	27.2	10	18.1	30	54.5	-	.0
AR,E....	142	3	2.1	-		3	100.0	-		-		1	33.3	2	66.6	-	.0
AR,W....	67	3	4.4	3	100.0	-		-		-		2	66.6	1	33.3	-	.0
IA,N....	64	-		-		-		-		-		-	.0	-	.0	-	.0
IA,S....	79	2	2.5	-		1	50.0	1	50.0	1	50.0	-	.0	1	50.0	-	.0
MN.....	336	43	12.7	2	4.6	22	51.1	19	44.1	12	27.9	7	16.2	24	55.8	-	.0
MO,E....	266	-		-		-		-		-		-	.0	-	.0	-	.0
MO,W....	359	2	.5	2	100.0	-		-		-		-	.0	2	100.0	-	.0
NE.....	146	-		-		-		-		-		-	.0	-	.0	-	.0
ND.....	157	-		-		-		-		-		-	.0	-	.0	-	.0
SD.....	154	2	1.2	-		1	50.0	1	50.0	2	100.0	-	.0	-	.0	-	.0
9TH...	4,028	140	3.4	19	13.5	10	7.1	111	79.2	55	39.2	12	8.5	29	20.7	44	31.4
AK.....	145	10	6.8	6	60.0	2	20.0	2	20.0	2	20.0	2	20.0	6	60.0	-	.0
AZ.....	1,141	105	9.2	3	2.8	3	2.8	99	94.2	49	46.6	5	4.7	12	11.4	39	37.1
CA,N....	6	-		-		-		-		-		-	.0	-	.0	-	.0
CA,E....	504	7	1.3	1	14.2	1	14.2	5	71.4	3	42.8	1	14.2	-	.0	3	42.8
CA,C....	1,234	1	.0	1	100.0	-		-		-		-	.0	1	100.0	-	.0
CA,S....	-	-		-		-		-		-		-	.0	-	.0	-	.0
HI.....	149	6	4.0	1	16.6	1	16.6	4	66.6	-		2	33.3	2	33.3	2	33.3
ID.....	135	-		-		-		-		-		-	.0	-	.0	-	.0
MT.....	80	8	10.0	7	87.5	1	12.5	-		-		1	12.5	7	87.5	-	.0
NV.....	312	-		-		-		-		-		-	.0	-	.0	-	.0
OR.....	290	3	1.0	-		2	66.6	1	33.3	1	33.3	1	33.3	1	33.3	-	.0
WA,E....	-	-		-		-		-		-		-	.0	-	.0	-	.0
WA,W....	3	-		-		-		-		-		-	.0	-	.0	-	.0
GUAM....	28	-		-		-		-		-		-	.0	-	.0	-	.0
NMI.....	1	-		-		-		-		-		-	.0	-	.0	-	.0
10TH..	1,840	24	1.3	8	33.3	13	54.1	3	12.5	4	16.6	10	41.6	9	37.5	1	4.1
CO.....	241	2	.8	-		1	50.0	1	50.0	1	50.0	-	.0	1	50.0	-	.0
KS.....	185	10	5.4	6	60.0	3	30.0	1	10.0	2	20.0	6	60.0	2	20.0	-	.0
NE.....	644	1	.1	-		1	100.0	-		-		-	.0	1	100.0	-	.0
OK,N....	201	5	2.4	1	20.0	4	80.0	-		-		2	40.0	3	60.0	-	.0
OK,E....	82	3	3.6	-		3	100.0	-		-		2	66.6	-	.0	1	33.3
OK,W....	218	3	1.3	1	33.3	1	33.3	1	33.3	1	33.3	-	.0	2	66.6	-	.0
UT.....	227	-		-		-		-		-		-	.0	-	.0	-	.0
WY.....	42	-		-		-		-		-		-	.0	-	.0	-	.0
11TH..	3,954	111	2.8	21	18.9	45	40.5	45	40.5	24	21.6	47	42.3	35	31.5	5	4.5
AL,N....	280	2	.7	1	50.0	1	50.0	-		1	50.0	-	.0	1	50.0	-	.0
AL,M....	221	8	4.0	3	33.3	5	55.5	1	11.1	-		4	44.4	5	55.5	-	.0
AL,S....	172	4	2.3	1	25.0	1	25.0	2	50.0	4	100.0	-	.0	-	.0	-	.0
FL,N....	221	2	.9	-		2	100.0	-		1	50.0	-	.0	1	50.0	-	.0
FL,M....	827	83	3.8	10	30.3	19	57.5	4	12.1	8	24.2	11	33.3	14	42.4	-	.0
FL,S....	1,569	48	3.0	2	4.1	11	22.9	35	72.9	6	12.5	27	56.2	11	22.9	4	8.3
GA,M....	385	8	2.0	1	12.5	4	50.0	3	37.5	2	25.0	4	50.0	1	12.5	1	12.5
GA,M....	106	1	.9	1	100.0	-		-		-		1	100.0	-	.0	-	.0
GA,S....	173	4	2.3	2	50.0	2	50.0	-		2	50.0	-	.0	2	50.0	-	.0

H-13

U.S. DISTRICT COURTS
PRETRIAL SERVICES ACT
LENGTH OF TIME FOR DEFENDANTS IN RELEASE STATUS
FOR THE TWELVE MONTH PERIOD ENDED DEC. 31, 1989

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS RELEASED ON BAIL		DAYS ON RELEASE									
				0-30		31-60		61-90		91-+70		121-180		181-OVER	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
TOTAL...	25,742	18,239	70.9	2,876	15.8	1,903	10.4	2,276	12.5	2,675	14.7	4,143	22.7	4,366	23.9
1ST...	1,137	640	56.3	83	13.0	36	5.6	59	9.2	80	12.5	142	22.2	240	37.5
ME.....	89	79	88.8	4	5.1	3	3.8	4	5.1	7	8.9	20	25.3	41	51.9
MA.....	292	233	79.8	26	11.2	7	3.0	14	6.0	36	15.5	45	19.3	105	45.1
NH.....	38	25	65.8	4	16.0	0	.0	6	24.0	3	12.0	7	28.0	5	20.0
RI.....	11	10	90.9	0	.0	0	.0	2	20.0	2	20.0	3	30.0	3	30.0
PR.....	707	293	41.4	49	16.7	26	8.9	33	11.3	32	10.9	67	22.9	86	29.4
2ND...	635	495	78.0	75	15.2	48	9.7	44	8.9	56	11.3	130	26.3	142	28.7
CT.....	129	101	78.3	7	6.9	5	5.0	4	4.0	10	9.9	37	36.6	38	37.6
NY,N....	43	26	60.5	2	7.7	1	3.8	1	3.8	1	3.8	4	15.4	17	65.4
NY,E....	7	7	100.0	7	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
NY,S....	235	189	80.4	31	16.4	17	9.0	16	8.5	23	12.2	56	29.6	46	24.3
NY,W....	123	111	90.2	19	17.1	24	21.6	16	14.4	13	11.7	21	18.9	18	16.2
VT.....	88	61	62.2	9	14.8	1	1.6	7	11.5	9	14.8	12	19.7	23	37.7
3RD...	1,673	1,298	77.6	198	15.3	152	11.7	187	14.4	228	17.6	307	23.7	226	17.4
DE.....	79	51	64.6	4	7.8	6	11.8	17	33.3	11	21.6	6	11.8	7	13.7
NJ.....	211	196	92.9	16	8.2	28	14.3	36	18.4	35	17.9	45	23.0	36	18.4
PA,E....	573	462	80.6	105	22.7	73	15.8	41	8.9	49	10.6	110	23.8	84	18.2
PA,M....	121	105	86.8	7	6.7	7	6.7	16	15.2	21	20.0	37	35.2	17	16.2
PA,W....	324	248	76.5	7	2.8	13	5.2	45	18.1	73	29.4	58	23.4	52	21.0
VI.....	365	236	64.7	59	25.0	25	10.6	27	11.4	39	16.5	51	21.6	30	12.7
4TH...	2,007	1,719	85.7	142	8.3	293	17.0	235	13.7	256	14.9	390	22.7	403	23.4
MD.....	689	648	94.0	80	12.3	113	17.4	83	12.8	75	11.6	140	21.6	157	24.2
NC,E....	221	193	87.3	12	6.2	18	9.3	15	7.8	22	11.4	61	31.6	65	33.7
NC,M....	203	150	73.9	6	4.0	6	4.0	13	8.7	45	30.0	48	32.0	32	21.3
NC,W....	413	320	77.5	19	5.9	109	34.1	60	18.8	49	15.3	38	11.9	45	14.1
SC.....	113	90	79.6	4	4.4	8	8.9	8	8.9	10	11.1	20	22.2	40	44.4
VA,E....	14	6	42.9	1	16.7	0	.0	0	.0	1	16.7	3	50.0	1	16.7
VA,W....	110	98	89.1	12	12.2	7	7.1	15	15.3	11	11.2	19	19.4	34	34.7
WV,N....	50	37	74.0	0	.0	0	.0	1	2.7	10	27.0	17	45.9	9	24.3
WV,S....	194	177	91.2	8	4.5	32	18.1	40	22.6	33	18.6	44	24.9	20	11.3
5TH...	4,428	3,059	69.1	773	25.3	276	9.0	413	13.5	464	15.2	584	19.1	549	17.9
LA,E....	511	396	77.5	32	8.1	27	6.8	76	19.2	81	20.5	111	28.0	69	17.4
LA,M....	67	58	86.6	4	6.9	8	13.8	11	19.0	13	22.4	12	20.7	10	17.2
LA,W....	142	119	83.8	12	10.1	18	15.1	17	14.3	9	7.6	35	29.4	28	23.5
MS,N....	68	64	94.1	0	.0	1	1.6	2	3.1	4	6.3	20	31.3	37	57.8
MS,S....	134	111	82.8	5	4.5	4	3.6	16	14.4	15	13.5	22	19.8	49	44.1
TX,N....	662	450	68.0	37	8.2	24	5.3	75	16.7	58	12.9	96	21.3	160	35.6
TX,E....	135	116	85.9	21	18.1	17	14.7	11	9.5	22	19.0	16	13.8	29	25.0
TX,S....	1,321	626	47.4	98	15.7	100	16.0	116	18.5	137	21.9	123	19.6	52	8.3
TX,W....	1,388	1,119	80.6	564	50.4	77	6.9	89	8.0	125	11.2	149	13.3	115	10.3
6TH...	2,484	2,083	83.9	352	16.9	165	7.9	215	10.3	292	14.0	516	24.8	543	26.1
KY,E....	199	135	67.8	4	3.0	5	3.7	18	13.3	19	14.1	38	28.1	51	37.8
KY,W....	213	173	81.2	9	5.2	13	7.5	23	13.3	19	11.0	31	17.9	78	45.1
MI,E....	921	780	84.7	285	36.5	39	5.0	33	4.2	75	9.6	158	20.3	190	24.4
MI,W....	200	185	92.5	7	4.2	26	15.8	17	10.3	37	22.4	44	26.7	34	20.6
OH,N....	510	472	92.5	28	5.9	27	5.7	36	15.7	67	14.2	157	33.2	124	26.3
OH,S....	184	151	82.1	2	1.3	38	25.2	31	20.5	37	24.5	28	18.5	15	9.9
TN,E....	163	139	85.3	12	8.6	12	8.6	14	10.1	32	23.0	49	35.3	20	14.4
TN,M....	78	55	70.5	4	7.3	4	7.3	5	9.1	6	10.9	13	23.6	23	41.8
TN,W....	16	13	81.3	1	7.7	1	7.7	0	.0	0	.0	3	23.1	8	61.5

H-13

U.S. DISTRICT COURTS
PRETRIAL SERVICES ACT
LENGTH OF TIME FOR DEFENDANTS IN RELEASE STATUS
FOR THE TWELVE MONTH PERIOD ENDED DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	DEFENDANTS RELEASED ON BAIL		DAYS ON RELEASE									
				0-30		31-60		61-90		91-120		121-180		181-OVER	
		TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.	TOTAL	PCT.
7TH..	1,786	1,404	78.6	218	15.5	182	13.0	127	9.0	175	12.5	278	19.8	424	30.2
IL,N....	777	621	79.9	140	22.5	43	6.9	34	5.5	45	7.2	113	18.2	246	39.6
IL,C....	33	25	75.8	2	8.0	3	12.0	2	8.0	0	.0	1	4.0	17	68.0
IL,S....	163	141	86.5	23	16.3	34	24.1	16	11.3	29	20.6	15	10.6	24	17.0
IN,N....	264	194	76.4	23	11.9	20	10.3	19	9.8	29	14.9	51	26.3	52	26.8
IN,S....	221	167	75.6	15	9.0	19	11.4	16	9.6	40	24.0	44	26.3	33	19.8
WI,E....	181	174	91.1	10	5.7	45	25.9	26	14.9	19	10.9	29	16.7	45	25.9
WI,W....	147	82	55.8	5	6.1	18	22.0	14	17.1	13	15.9	25	30.5	7	8.5
8TH..	1,770	1,326	74.9	129	9.7	139	10.5	206	15.5	225	17.0	361	27.2	266	20.1
AR,E....	142	117	82.4	5	4.3	22	18.8	24	20.5	23	19.7	22	18.8	21	17.9
AR,W....	67	47	70.1	4	8.5	7	14.9	6	12.8	8	17.0	14	29.8	8	17.0
IA,N....	64	55	85.9	3	5.5	3	5.5	1	1.8	11	20.0	17	30.9	20	36.4
IA,S....	79	68	86.1	1	1.5	5	7.4	24	35.3	9	13.2	25	36.8	4	5.9
MN.....	336	237	70.5	16	6.8	12	5.1	24	10.1	28	11.8	80	38.0	67	28.3
MO,E....	266	192	72.2	45	23.4	22	11.5	29	15.1	41	21.4	32	16.7	23	12.0
MO,W....	359	244	68.0	23	9.4	37	15.2	49	20.1	37	15.2	52	21.3	46	18.9
NE.....	146	131	89.7	13	9.9	6	4.6	13	9.9	19	14.5	42	32.1	38	29.0
ND.....	157	106	67.5	11	10.4	14	13.2	16	15.1	14	13.2	36	34.0	15	14.2
SD.....	194	129	83.8	8	6.2	11	8.5	20	15.5	35	27.1	31	24.0	24	18.6
9TH..	4,028	2,458	61.0	505	20.5	191	7.8	250	10.2	311	12.7	565	23.0	636	25.9
AK.....	145	121	83.4	47	38.8	15	12.4	20	16.5	16	13.2	18	14.9	5	4.1
AZ.....	1,141	638	55.9	137	21.5	54	8.5	53	8.3	77	12.1	166	26.0	151	23.7
CA,N....	6	5	83.3	4	80.0	1	20.0	0	.0	0	.0	0	.0	0	.0
CA,E....	504	254	50.4	92	36.2	23	9.1	19	7.5	17	6.7	40	15.7	63	24.8
CA,C....	1,234	722	58.5	113	15.7	52	7.2	91	12.6	117	16.2	171	23.7	178	24.7
CA,S....	0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
HI.....	149	106	71.1	32	30.2	9	8.5	9	8.5	9	8.5	15	14.2	32	30.2
ID.....	135	111	82.2	4	3.6	8	7.2	15	13.5	22	19.8	23	20.7	39	35.1
MT.....	80	55	68.8	4	7.3	3	5.5	6	10.9	10	18.2	20	36.4	12	21.8
NV.....	312	252	80.8	35	13.9	8	3.2	14	5.6	21	8.3	62	24.6	112	44.4
OR.....	290	164	56.6	16	9.8	13	7.9	22	13.4	22	13.4	49	29.9	42	25.6
WA,E....	0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
WA,W....	3	2	66.7	0	.0	0	.0	0	.0	0	.0	0	.0	2	100.0
GUAM....	28	28	100.0	21	75.0	5	17.9	1	3.6	0	.0	1	3.6	0	.0
NMI.....	1	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
10TH..	1,840	1,241	67.4	133	10.7	144	11.6	179	14.4	239	19.3	309	24.9	237	19.1
CO.....	241	193	80.1	22	11.4	40	20.7	40	20.7	49	25.4	22	11.4	20	10.4
KS.....	195	139	71.1	5	3.6	13	9.4	17	12.2	33	23.7	42	30.2	29	20.9
NM.....	644	366	56.8	40	10.9	18	4.9	34	9.3	58	15.8	124	33.9	92	25.1
OK,N....	201	145	72.1	4	2.8	4	2.8	27	18.6	31	21.4	42	29.0	37	25.5
OK,E....	82	63	76.8	4	6.3	27	42.9	20	31.7	5	7.9	6	9.5	1	1.6
OK,W....	218	140	64.2	26	18.6	13	9.3	12	8.6	38	27.1	31	22.1	20	14.3
UT.....	227	160	70.5	31	19.4	26	16.3	21	13.1	19	11.9	30	18.8	33	20.6
WY.....	42	35	83.3	1	2.9	3	8.6	8	22.9	6	17.1	12	34.3	5	14.3
11TH..	3,954	2,516	63.6	268	10.7	277	11.0	361	14.3	349	13.9	561	22.3	700	27.8
AL,N....	280	220	78.6	28	12.7	114	51.8	30	13.6	14	6.4	21	9.5	13	5.9
AL,M....	221	196	88.7	16	8.2	33	16.8	42	21.4	43	21.9	40	20.4	22	11.2
AL,S....	172	119	69.2	4	3.4	4	3.4	20	16.8	30	25.2	32	26.9	29	24.4
FL,M....	221	133	60.2	6	4.5	9	6.8	39	29.3	25	18.8	30	22.6	24	18.0
FL,N....	827	527	63.7	40	7.6	46	8.7	93	17.6	89	16.9	132	25.0	127	24.1
FL,S....	1,900	857	54.6	121	14.1	42	4.9	82	9.6	104	12.1	215	25.1	293	34.2
GA,N....	305	248	64.4	25	10.1	5	2.0	14	5.6	18	7.3	52	21.0	134	54.0
GA,M....	106	84	79.2	3	3.6	5	6.0	19	22.6	5	6.0	17	20.2	35	41.7
GA,S....	173	132	76.3	25	18.9	19	14.4	22	16.7	21	15.9	22	16.7	23	17.4

* EXCLUDES THE DISTRICT OF COLUMBIA.

H-14

U.S. DISTRICT COURTS*
DISPOSITION OF DEFENDANTS

FOR CLOSED CASES
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	(DISPOSITION) DISMISSED TOTAL	DISMISSED PCT.	ACQUITTED TOTAL	ACQUITTED PCT.	CONVICTED TOTAL	CONVICTED PCT.	CONVICTED FINE ONLY TOTAL	CONVICTED FINE ONLY PCT.	PRETRIAL DIVERSION TOTAL	PRETRIAL DIVERSION PCT.	FUGITIVE TOTAL	FUGITIVE PCT.	OTHER† TOTAL	OTHER† PCT.
TOTAL..	26,112	3,711	14.2	721	2.8	20,244	77.5	383	1.5	370	1.4	312	1.2	371	1.4
1ST..	1,167	147	12.6	41	3.5	910	78.0	20	1.7	30	2.6	9	.8	10	.9
ME.....	81	12	13.2	1	1.1	73	80.2	3	3.3	2	2.2	-	.0	-	.0
MA.....	302	50	16.6	9	3.0	221	73.2	3	1.0	10	3.3	8	2.6	1	.3
NH.....	39	7	17.9	1	2.6	30	76.9	-	.0	1	2.6	-	.0	-	.0
RI.....	11	-	.0	1	9.1	9	81.8	-	.0	-	.0	1	9.1	-	.0
PR.....	724	78	10.8	29	4.0	577	79.7	14	1.9	17	2.3	-	.0	9	1.2
2ND...	841	127	15.8	11	1.7	460	71.8	20	3.1	6	.9	13	2.0	4	.6
CT.....	130	12	9.2	4	3.1	106	81.5	3	2.3	1	.8	3	2.3	1	.8
NY,N....	43	6	14.0	1	2.3	36	83.7	-	.0	-	.0	-	.0	-	.0
NY,E....	7	7	100.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
NY,S....	238	77	32.4	4	1.7	145	60.9	2	.8	3	1.3	4	1.7	3	1.3
NY,W....	125	16	12.8	1	.8	102	81.6	2	1.6	2	1.6	2	1.6	-	.0
VT.....	98	9	9.2	1	1.0	71	72.4	13	13.3	-	.0	4	4.1	-	.0
3RD...	1,728	252	14.6	60	3.5	1,269	73.4	25	1.4	55	3.2	17	1.0	50	2.9
DE.....	80	15	18.8	7	8.8	53	66.3	-	.0	1	1.3	2	2.5	2	2.5
NJ.....	236	16	6.8	10	4.2	175	74.2	7	3.0	25	10.6	3	1.3	-	.0
PA,E....	573	92	16.1	13	2.3	450	78.5	6	1.0	-	.0	6	1.0	6	1.0
PA,M....	123	13	10.6	2	1.6	105	85.4	-	.0	2	1.6	-	.0	1	.8
PA,W....	351	21	6.0	14	4.0	279	79.5	10	2.8	27	7.7	-	.0	-	.0
VI.....	365	95	26.0	14	3.8	207	56.7	2	.5	-	.0	6	1.6	41	11.2
4TH...	2,036	194	9.5	47	2.3	1,662	81.6	69	3.4	29	1.4	24	1.2	11	.5
MD.....	700	71	10.1	16	2.3	527	75.3	55	7.9	11	1.6	15	2.1	5	.7
NC,E....	222	29	13.1	10	4.5	176	79.3	2	.9	1	.5	1	.5	3	1.4
NC,M....	209	7	3.3	6	2.9	183	87.6	2	1.0	6	2.9	4	1.9	1	.5
NC,W....	420	45	10.7	8	1.9	352	83.8	6	1.4	7	1.7	-	.0	2	.5
SC.....	114	8	7.0	2	1.8	101	88.6	1	.9	1	.9	1	.9	-	.0
VA,E....	14	2	14.3	-	.0	12	85.7	-	.0	-	.0	-	.0	-	.0
VA,W....	111	13	11.7	2	1.8	91	82.0	1	.9	1	.9	3	2.7	-	.0
WV,N....	50	1	2.0	3	6.0	46	92.0	-	.0	-	.0	-	.0	-	.0
WV,S....	196	18	9.2	-	.0	174	88.8	2	1.0	2	1.0	-	.0	-	.0
5TH...	4,547	580	12.8	116	2.6	3,601	79.2	52	1.1	119	2.6	51	1.1	28	.6
LA,E....	524	43	8.2	19	3.6	430	82.1	16	3.1	13	2.5	2	.4	1	.2
LA,M....	74	8	10.8	-	.0	58	78.4	1	1.4	7	9.5	-	.0	-	.0
LA,W....	145	10	6.9	3	2.1	113	77.9	9	6.2	3	2.1	-	.0	7	4.8
MS,N....	71	1	1.4	2	2.8	63	88.7	-	.0	3	4.2	1	1.4	1	1.4
MS,S....	138	23	16.7	9	6.5	101	73.2	-	.0	4	2.9	1	.7	-	.0
TX,N....	672	118	17.7	14	2.1	520	77.4	1	.1	10	1.5	8	1.2	-	.0
TX,E....	140	21	15.0	5	3.6	104	74.3	-	.0	5	3.6	-	.0	5	3.6
TX,S....	1,376	235	17.1	37	2.7	1,010	73.4	12	.9	55	4.0	22	1.6	5	.4
TX,W....	1,407	120	8.5	27	1.9	1,202	85.4	13	.9	19	1.4	17	1.2	9	.6
6TH...	2,495	511	20.5	46	1.8	1,870	74.9	30	1.2	11	.4	13	.5	14	.6
KY,E....	199	23	11.6	3	1.5	167	83.9	6	3.0	-	.0	-	.0	-	.0
KY,W....	220	18	8.2	15	6.8	170	77.3	6	2.7	7	3.2	1	.5	3	1.4
MI,E....	923	374	40.5	13	1.4	517	56.0	8	.9	2	.2	4	.4	5	.5
MI,W....	200	14	7.0	6	3.0	178	89.5	1	.5	-	.0	-	.0	-	.0
OH,N....	510	31	6.1	2	.4	467	91.6	3	.6	-	.0	6	1.2	1	.2
OH,S....	184	12	6.5	-	.0	170	92.4	2	1.1	-	.0	-	.0	-	.0
TN,E....	165	34	20.6	5	3.0	117	70.9	3	1.8	2	1.2	2	1.2	2	1.2
TN,M....	78	3	3.8	-	.0	72	92.3	1	1.3	-	.0	-	.0	2	2.6
TN,W....	16	2	12.5	2	12.5	11	68.8	-	.0	-	.0	-	.0	1	6.3

H-14

U.S. DISTRICT COURTS*
DISPOSITION OF DEFENDANTS

FOR CLOSED CASES
FOR THE TWELVE MONTH PERIOD ENDING DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	(DISPOSITION) DISMISSED TOTAL	DISMISSED PCT.	ACQUITTED TOTAL	ACQUITTED PCT.	CONVICTED TOTAL	CONVICTED PCT.	CONVICTED FINE ONLY TOTAL	CONVICTED FINE ONLY PCT.	PRETRIAL DIVERSION TOTAL	PRETRIAL DIVERSION PCT.	FUGITIVE TOTAL	FUGITIVE PCT.	OTHER1 TOTAL	OTHER1 PCT.
7TH...	1,793	321	17.9	42	2.3	1,394	77.7	13	.7	7	.4	9	.5	7	.4
IL,N....	780	184	23.6	16	2.1	567	72.7	-	.0	3	.4	7	.9	3	.4
IL,C....	33	6	18.2	2	6.1	24	72.7	-	.0	-	.0	-	.0	1	3.0
IL,S....	166	32	19.3	3	1.8	125	75.3	1	.6	3	1.8	2	1.2	-	.0
IN,N....	254	35	13.8	7	2.8	206	81.1	4	1.6	-	.0	-	.0	2	.8
IN,S....	222	31	14.0	5	2.3	178	80.2	6	2.7	1	.5	-	.0	1	.5
WI,E....	191	7	3.7	7	3.7	175	91.6	2	1.0	-	.0	-	.0	-	.0
WI,W....	147	26	17.7	2	1.4	119	81.0	-	.0	-	.0	-	.0	-	.0
8TH...	1,785	237	13.3	56	3.1	1,435	80.4	19	1.1	15	.8	7	.4	16	.9
AR,E....	146	15	10.3	5	3.4	121	82.9	-	.0	4	2.7	-	.0	1	.7
AR,W....	68	11	16.2	9	13.2	46	67.6	-	.0	1	1.5	-	.0	-	.0
IA,N....	66	7	10.6	4	6.1	50	75.8	2	3.0	2	3.0	1	1.5	-	.0
IA,S....	79	12	15.2	5	6.3	59	74.7	-	.0	-	.0	2	2.5	1	1.3
MN.....	336	26	7.7	5	1.5	300	89.3	-	.0	-	.0	3	.9	2	.6
MO,E....	267	87	32.6	4	1.5	168	62.9	3	1.1	1	.4	-	.0	4	1.5
MO,W....	365	23	6.3	6	1.6	317	86.8	12	3.3	6	1.6	1	.3	-	.0
NE.....	146	22	15.1	3	2.1	121	82.9	-	.0	-	.0	-	.0	-	.0
ND.....	158	22	13.9	9	5.7	119	75.3	2	1.3	1	.6	-	.0	5	3.2
SD.....	154	12	7.8	6	3.9	134	87.0	-	.0	-	.0	-	.0	2	1.3
9TH...	4,077	540	13.2	79	1.9	3,181	78.0	62	1.5	49	1.2	84	2.1	82	2.0
AK.....	145	11	7.6	6	4.1	100	69.0	3	2.1	-	.0	-	.0	25	17.2
AZ.....	1,155	121	10.5	28	2.4	914	79.1	5	.4	14	1.2	52	4.5	21	1.8
CA,N....	8	4	50.0	-	.0	1	12.5	-	.0	2	25.0	1	12.5	-	.0
CA,E....	506	73	14.4	5	1.0	397	78.5	20	4.0	2	.4	6	1.2	3	.6
CA,C....	1,241	216	17.4	16	1.3	956	77.0	1	.1	7	.6	15	1.2	30	2.4
CA,S....	-	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
HI.....	149	29	19.5	3	2.0	104	69.8	11	7.4	-	.0	1	.7	1	.7
ID.....	137	11	8.0	3	2.2	119	86.9	2	1.5	2	1.5	-	.0	-	.0
MT.....	82	6	7.3	1	1.2	65	79.3	6	7.3	2	2.4	-	.0	2	2.4
NV.....	329	32	9.7	13	4.0	253	76.9	10	3.0	17	5.2	4	1.2	-	.0
OR.....	292	35	12.0	4	1.4	244	83.6	2	.7	2	.7	5	1.7	-	.0
WA,E....	-	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
WA,W....	4	-	.0	-	.0	3	75.0	-	.0	1	25.0	-	.0	-	.0
GUAM....	28	2	7.1	-	.0	24	85.7	2	7.1	-	.0	-	.0	-	.0
NMI.....	1	-	.0	-	.0	1	100.0	-	.0	-	.0	-	.0	-	.0
10TH..	1,868	305	16.3	41	2.2	1,339	71.7	33	1.8	28	1.5	13	.7	109	5.8
CO.....	243	50	20.6	3	1.2	179	73.7	8	3.3	2	.8	-	.0	1	.4
KS.....	197	20	10.2	6	3.0	156	79.2	1	.5	12	6.1	1	.5	1	.5
NM.....	649	134	20.6	14	2.2	384	59.2	3	.5	5	.8	11	1.7	98	15.1
OK,N....	201	20	10.0	4	2.0	171	85.1	6	3.0	-	.0	-	.0	-	.0
OK,E....	85	17	20.0	2	2.4	62	72.9	1	1.2	3	3.5	-	.0	-	.0
OK,W....	221	36	16.3	6	2.7	174	78.7	1	.5	3	1.4	-	.0	1	.5
UT.....	230	21	9.1	6	2.6	180	78.3	12	5.2	3	1.3	1	.4	7	3.0
WY.....	42	7	16.7	-	.0	33	78.6	1	2.4	-	.0	-	.0	1	2.4
11TH..	3,974	497	12.5	182	4.6	3,123	78.6	40	1.0	20	.5	72	1.8	40	1.0
AL,N....	282	13	4.6	5	1.8	254	90.1	6	2.1	2	.7	-	.0	2	.7
AL,M....	226	19	8.4	13	5.8	184	81.4	5	2.2	5	2.2	-	.0	1	.4
AL,S....	173	10	5.8	6	3.5	151	87.3	-	.0	1	.6	4	2.3	1	.6
FL,N....	223	23	10.3	14	6.3	182	81.6	1	.4	2	.9	-	.0	1	.4
FL,M....	831	107	12.9	23	2.8	657	79.1	15	1.8	4	.5	7	.8	18	2.2
FL,S....	1,572	233	14.8	97	6.2	1,159	73.7	6	.4	3	.2	59	3.8	15	1.0
GA,N....	385	43	11.2	12	3.1	324	84.2	3	.8	-	.0	2	.5	1	.3
GA,M....	109	29	26.9	8	7.4	67	62.0	1	.9	2	1.9	-	.0	1	.9
GA,S....	174	20	11.6	6	2.9	145	83.3	3	1.7	1	.6	-	.0	-	.0

* EXCLUDES THE DISTRICT OF COLUMBIA.

H-15

U.S. DISTRICT COURTS*
DISPOSITION OF DEFENDANTS
IN PRETRIAL DETENTION
FOR CLOSED CASES
FOR THE TWELVE MONTH PERIOD ENDED DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	(DISPOSITION) DISMISSED TOTAL	DISMISSED PCT.	ACQUITTED TOTAL	ACQUITTED PCT.	CONVICTED TOTAL	CONVICTED PCT.	CONVICTED FINE ONLY TOTAL	CONVICTED FINE ONLY PCT.	PRETRIAL DIVERSION TOTAL	PRETRIAL DIVERSION PCT.	FUGITIVE TOTAL	FUGITIVE PCT.	OTHER TOTAL	OTHER PCT.
TOTAL...	5,170	535	10.3	113	2.2	4,373	84.6	60	1.2	-	.0	31	.6	58	1.1
1ST...	293	20	6.8	16	5.5	252	86.0	3	1.0	-	.0	1	.3	1	.3
ME.....	15	2	13.3	-	.0	12	80.0	1	6.7	-	.0	-	.0	-	.0
MA.....	64	6	9.4	1	1.6	56	87.5	-	.0	-	.0	1	1.6	-	.0
NH.....	6	-	.0	-	.0	6	100.0	-	.0	-	.0	-	.0	-	.0
RI.....	2	-	.0	-	.0	2	100.0	-	.0	-	.0	-	.0	-	.0
PR.....	206	12	5.8	15	7.3	176	85.4	2	1.0	-	.0	-	.0	1	.5
2ND...	115	20	17.4	1	.9	90	78.3	1	.9	-	.0	1	.9	2	1.7
CT.....	17	-	.0	-	.0	16	94.1	-	.0	-	.0	1	5.9	-	.0
NY,N....	11	4	36.4	-	.0	7	63.6	-	.0	-	.0	-	.0	-	.0
NY,E....	6	6	100.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
NY,S....	39	6	15.4	1	2.6	30	76.9	-	.0	-	.0	-	.0	2	5.1
NY,W....	5	-	.0	-	.0	5	100.0	-	.0	-	.0	-	.0	-	.0
VT.....	37	4	10.8	-	.0	32	86.5	1	2.7	-	.0	-	.0	-	.0
3RD...	267	28	10.5	8	3.0	219	82.0	4	1.5	-	.0	3	1.1	5	1.9
DE.....	20	3	15.0	2	10.0	15	75.0	-	.0	-	.0	-	.0	-	.0
NJ.....	26	1	3.8	1	3.8	24	92.3	-	.0	-	.0	-	.0	-	.0
PA,E....	93	15	16.1	2	2.2	73	78.5	-	.0	-	.0	1	1.1	2	2.2
PA,M....	14	2	14.3	-	.0	11	78.6	-	.0	-	.0	-	.0	1	7.1
PA,W....	61	4	6.6	1	1.6	52	85.2	4	6.6	-	.0	-	.0	-	.0
VI.....	53	3	5.7	2	3.8	44	83.0	-	.0	-	.0	2	3.8	2	3.8
4TH...	310	26	8.4	7	2.3	274	88.4	2	.6	-	.0	-	.0	1	.3
MD.....	97	9	9.3	2	2.1	85	87.6	1	1.0	-	.0	-	.0	-	.0
NC,E....	30	1	3.3	2	6.7	26	86.7	-	.0	-	.0	-	.0	1	3.3
NC,M....	55	-	.0	-	.0	55	100.0	-	.0	-	.0	-	.0	-	.0
NC,W....	50	9	18.0	-	.0	41	82.0	-	.0	-	.0	-	.0	-	.0
SC.....	29	3	10.3	2	6.9	23	79.3	1	3.4	-	.0	-	.0	-	.0
VA,E....	6	1	16.7	-	.0	5	83.3	-	.0	-	.0	-	.0	-	.0
VA,W....	11	1	9.1	-	.0	10	90.9	-	.0	-	.0	-	.0	-	.0
WV,N....	13	-	.0	1	7.7	12	92.3	-	.0	-	.0	-	.0	-	.0
WV,S....	19	2	10.5	-	.0	17	89.5	-	.0	-	.0	-	.0	-	.0
5TH...	541	56	10.4	11	2.0	450	83.2	13	2.4	-	.0	3	.6	8	1.8
LA,E....	115	7	6.1	3	2.6	98	85.2	6	5.2	-	.0	1	.9	-	.0
LA,M....	5	-	.0	-	.0	5	100.0	-	.0	-	.0	-	.0	-	.0
LA,W....	21	1	4.8	-	.0	14	66.7	2	9.5	-	.0	-	.0	4	19.0
MS,N....	3	-	.0	1	33.3	2	66.7	-	.0	-	.0	-	.0	-	.0
MS,S....	15	1	6.7	1	6.7	12	80.0	-	.0	-	.0	1	6.7	-	.0
TX,N....	85	9	10.6	-	.0	76	89.4	-	.0	-	.0	-	.0	-	.0
TX,E....	44	1	2.3	1	2.3	40	90.9	-	.0	-	.0	-	.0	2	4.5
TX,S....	142	30	21.1	3	2.1	102	71.8	4	2.8	-	.0	1	.7	2	1.4
TX,W....	111	7	6.3	2	1.8	101	91.0	1	.9	-	.0	-	.0	-	.0
6TH...	423	50	11.8	7	1.7	348	82.3	10	2.4	-	.0	3	.7	5	1.2
KY,E....	56	3	5.4	-	.0	50	89.3	3	5.4	-	.0	-	.0	-	.0
KY,W....	50	4	8.0	1	2.0	41	82.0	1	2.0	-	.0	1	2.0	2	4.0
MI,E....	127	31	24.4	3	2.4	85	66.9	4	3.1	-	.0	1	.8	3	2.4
MI,W....	46	2	4.3	2	4.3	41	89.1	1	2.2	-	.0	-	.0	-	.0
OH,N....	61	3	4.9	-	.0	57	93.4	-	.0	-	.0	1	1.6	-	.0
OH,S....	37	3	8.1	-	.0	33	89.2	1	2.7	-	.0	-	.0	-	.0
TN,E....	24	3	12.5	1	4.2	20	83.3	-	.0	-	.0	-	.0	-	.0
TN,M....	21	1	4.8	-	.0	20	95.2	-	.0	-	.0	-	.0	-	.0
TN,W....	1	-	.0	-	.0	1	100.0	-	.0	-	.0	-	.0	-	.0

H-15

U.S. DISTRICT COURTS*
DISPOSITION OF DEFENDANTS
IN PRETRIAL DETENTION
FOR CLOSED CASES
FOR THE TWELVE MONTH PERIOD ENDED DEC. 31, 1988

CIRCUIT AND DISTRICT	PSA CASES CLOSED	(DISPOSITION) DISMISSED TOTAL	DISMISSED PCT.	ACQUITTED TOTAL	ACQUITTED PCT.	CONVICTED TOTAL	CONVICTED PCT.	CONVICTED FINE ONLY TOTAL	CONVICTED FINE ONLY PCT.	PRETRIAL DIVERSION TOTAL	PRETRIAL DIVERSION PCT.	FUGITIVE TOTAL	FUGITIVE PCT.	OTHER1 TOTAL	OTHER1 PCT.
7TH...	341	38	11.1	3	.9	292	85.6	3	.9	-	.0	2	.6	3	.9
IL,N....	144	12	8.3	1	.7	127	88.2	-	.0	-	.0	2	1.4	2	1.4
IL,C....	10	1	10.0	-	.0	9	90.0	-	.0	-	.0	-	.0	-	.0
IL,S....	23	3	13.0	-	.0	20	87.0	-	.0	-	.0	-	.0	-	.0
IN,N....	42	5	11.9	1	2.4	34	81.0	1	2.4	-	.0	-	.0	1	2.4
IN,S....	35	3	8.6	-	.0	32	91.4	-	.0	-	.0	-	.0	-	.0
WI,E....	38	1	2.6	1	2.6	34	89.5	2	5.3	-	.0	-	.0	-	.0
WI,W....	49	13	26.5	-	.0	36	73.5	-	.0	-	.0	-	.0	-	.0
8TH...	317	34	10.7	11	3.5	263	83.0	5	1.6	-	.0	1	.3	3	.9
AR,E....	10	1	10.0	-	.0	9	90.0	-	.0	-	.0	-	.0	-	.0
AR,W....	19	1	5.3	4	21.1	14	73.7	-	.0	-	.0	-	.0	-	.0
IA,N....	8	-	.0	-	.0	8	100.0	-	.0	-	.0	-	.0	-	.0
IA,S....	5	-	.0	-	.0	4	80.0	-	.0	-	.0	-	.0	1	20.0
MN.....	55	5	9.1	-	.0	49	89.1	-	.0	-	.0	1	1.8	-	.0
MO,E....	32	14	43.8	2	6.3	16	50.0	-	.0	-	.0	-	.0	-	.0
MO,W....	78	8	10.3	1	1.3	64	82.1	5	6.4	-	.0	-	.0	-	.0
NE.....	17	1	5.9	-	.0	16	94.1	-	.0	-	.0	-	.0	-	.0
ND.....	53	2	3.8	3	5.7	47	88.7	-	.0	-	.0	-	.0	1	1.9
SD.....	40	2	5.0	1	2.5	36	90.0	-	.0	-	.0	-	.0	1	2.5
9TH...	1,261	140	11.1	19	1.5	1,068	84.7	13	1.0	-	.0	12	1.0	9	.7
AK.....	17	-	.0	1	5.9	16	94.1	-	.0	-	.0	-	.0	-	.0
AZ.....	228	17	7.5	5	2.2	194	85.1	1	.4	-	.0	7	3.1	4	1.8
CA,N....	1	1	100.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
CA,E....	289	25	8.7	3	1.0	250	86.5	10	3.5	-	.0	1	.3	-	.0
CA,C....	404	71	17.6	4	1.0	325	80.4	-	.0	-	.0	-	.0	4	1.0
CA,S....	-	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
HI.....	42	3	7.1	1	2.4	38	90.5	-	.0	-	.0	-	.0	-	.0
ID.....	20	1	5.0	1	5.0	17	85.0	1	5.0	-	.0	-	.0	-	.0
MT.....	14	1	7.1	-	.0	12	85.7	-	.0	-	.0	-	.0	1	7.1
NV.....	87	13	14.9	1	1.1	69	79.3	1	1.1	-	.0	3	3.4	-	.0
OR.....	156	8	5.1	3	1.9	144	92.3	-	.0	-	.0	1	.6	-	.0
WA,E....	-	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
WA,W....	1	-	.0	-	.0	1	100.0	-	.0	-	.0	-	.0	-	.0
GUAM....	2	-	.0	-	.0	2	100.0	-	.0	-	.0	-	.0	-	.0
NMI.....	-	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0	-	.0
10TH..	486	70	14.4	10	2.1	388	79.8	1	.2	-	.0	4	.8	13	2.7
CO.....	48	12	25.0	-	.0	36	75.0	-	.0	-	.0	-	.0	-	.0
KS.....	38	6	15.8	1	2.6	29	76.3	-	.0	-	.0	1	2.6	1	2.6
NM.....	218	33	15.1	3	1.4	169	77.5	-	.0	-	.0	2	.9	11	5.0
OK,N....	29	3	10.3	2	6.9	24	82.8	-	.0	-	.0	-	.0	-	.0
OK,E....	10	-	.0	-	.0	10	100.0	-	.0	-	.0	-	.0	-	.0
OK,W....	65	7	10.8	1	1.5	56	86.2	1	1.5	-	.0	-	.0	-	.0
UT.....	75	9	12.0	3	4.0	61	81.3	-	.0	-	.0	1	1.3	1	1.3
WY.....	3	-	.0	-	.0	3	100.0	-	.0	-	.0	-	.0	-	.0
11TH..	816	53	6.5	20	2.5	729	89.3	5	.6	-	.0	1	.1	8	1.0
AL,N....	16	1	6.3	-	.0	15	93.8	-	.0	-	.0	-	.0	-	.0
AL,M....	9	-	.0	-	.0	8	88.9	-	.0	-	.0	-	.0	1	11.1
AL,S....	43	1	2.3	2	4.7	40	93.0	-	.0	-	.0	-	.0	-	.0
FL,N....	86	5	5.8	1	1.2	79	91.9	-	.0	-	.0	-	.0	1	1.2
FL,M....	265	24	9.1	6	2.3	227	85.7	4	1.5	-	.0	-	.0	4	1.5
FL,S....	246	16	6.5	10	4.1	218	88.6	-	.0	-	.0	1	.4	1	.4
GA,N....	109	5	4.6	-	.0	102	93.6	1	.9	-	.0	-	.0	1	.9
GA,M....	14	-	.0	-	.0	14	100.0	-	.0	-	.0	-	.0	-	.0
GA,S....	28	1	3.6	1	3.6	26	92.9	-	.0	-	.0	-	.0	-	.0

* EXCLUDES THE DISTRICT OF COLUMBIA.

1 INCLUDES MATERIAL WITNESS NOT CHARGED WITH OFFENSE.

Profile of All Cases Closed During Calendar 1988

DISTRICT: NATIONAL PSA STATISTICAL PROFILE FOR CLOSED RECORDS 07/19/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	134	.5
ROBBERY	836	3.2
ASSAULT	359	1.4
BURGLARY	135	.5
LAR/THEFT	1,538	6.0
EMBEZZELMENT	1,125	4.4
FRAUD	4,314	16.8
AUTO THEFT	291	1.1
FORGERY	1,308	5.1
SEX OFFENSE	289	1.1
MARIHUANA	2,471	9.6
NARCOTICS	5,814	22.6
CONTROLLED SUBSTANCES	983	3.8
MISC OFFENSE	2,624	10.2
IMMIGRATION	2,037	7.9
LIQUOR/IRS	7	.0
FED STATUS	0	.0
OTHER	1,467	5.7

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	1,312	5.1
ON PAROLE	539	2.1
ON PROBATION	1,375	5.3
ON ESCAPE/WALKOFF	208	.8
IMMIGRATION	571	2.2
ON PR AND OTHER	175	.7
OTHER EXCLUDING	402	1.6
NO HISTORY	11,514	44.7
NO PENDING	7,917	30.8
OTHER	1,729	6.7

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	11,828	45.9
WHITE,HISPANIC	6,291	24.4
BLACK,NON-HISPANIC	6,025	23.4
BLACK,HISPANIC	446	1.7
AMERICAN INDIAN/ ALASKAN NATIVE	516	2.0
ASIAN OR PACIFIC	329	1.3
OTHER	188	.7
UNKNOWN	119	.5

EDUCATION	TOTAL	PCT.
NO EDUC	227	.9
ELEMENTARY	2,880	11.2
SOME HS	5,649	21.9
VOCATIONAL	247	1.0
G.E.D.	1,699	6.6
HS GRAD	6,034	23.4
SOME COLLEGE	4,773	18.5
COLLEGE GRAD	1,362	5.3
POST GRAD	568	2.2
UNKNOWN	2,303	8.9

SEX AND AGE RANGE				
MALES	PCT.	AGE	FEMALE	PCT.
844	3.3	< 22	145	.6
1,692	6.6	22-24	394	1.5
4,017	15.6	25-29	954	3.7
4,147	16.1	30-34	957	3.7
658	41.4	> 35	1,925	7.5
182	.7	OTHER	29	.1

MARITAL STATUS	TOTAL	PCT.
MARRIED	9,417	36.6
SINGLE	7,340	28.5
COHABITATING	1,618	6.3
DIVORCED	3,640	14.1
SEPARATE	1,775	6.9
WIDOWED	309	1.2
UNKNOWN	1,643	6.4

OFFENSE LVL	TOTAL	PCT.
PETTY	1,205	4.7
MISDEMEANOR	1,318	5.1
FELONY	23,214	90.2

CITIZENSHIP	TOTAL	PCT.
US	19,381	75.3
LEGAL ALIEN	2,515	9.8
ILLEGAL ALIEN	3,102	12.1
UNKNOWN	744	2.9

TIME IN AREA	TOTAL	PCT.
00-01	4,637	18.0
02-06	1,303	5.1
07-12	1,062	4.1
13-59	2,604	10.1
60-OVER	16,136	62.7

ARREST STATUS	TOTAL	PCT.
ARRESTED	19,247	74.8
NOT-ARRESTED	6,495	25.2

RES STATUS	TOTAL	PCT.
OWN/BUYING	6,326	24.6
RENTING	9,986	38.8
NO CONTRIBUTE	5,192	20.2
NO PL TO LIVE	414	1.6
OTHER/UNKNOWN	3,824	14.9

EMPLOYED	TOTAL	PCT.
YES	14,023	54.5
NO	9,713	37.7
UNKNOWN	2,006	7.8

DRUG/ALCOHOL	TOTAL	PCT.
YES	6,229	24.2
NO	16,764	65.1
UNKNOWN	2,749	10.7

PENDING CASES	TOTAL	PCT.
FELONIES	2,235	8.7
MISDEMEANOR	843	3.3

TOTAL CASES ACTIVATED FOR IS 25742 Closed Cases

Profile of All Cases Closed During Calendar 1988 Involving Pretrial Detention Under 3142 (e)

DISTRICT: NATIONAL PSA STATISTICAL PROFILE FOR CLOSED RECORDS (DEFENDANTS IN PREVENTIVE DETENTION) 7/19/89 (01/88-12/88)

OFFENSE CHARGED	TOTAL	PCT.
HOMICIDE	60	1.2
ROBBERY	464	9.0
ASSAULT	97	1.9
BURGLARY	43	.8
LAR/THEFT	135	2.6
EMBEZZELMENT	13	.3
FRAUD	353	6.8
AUTO THEFT	34	.7
FORGERY	109	2.1
SEX OFFENSE	57	1.1
MARIHUANA	485	9.4
NARCOTICS	1,987	38.4
CONTROLLED SUBSTANCES	243	4.7
MISC OFFENSE	539	10.4
IMMIGRATION	373	7.2
LIQUOR/IRS	0	.0
FED STATUS	0	.0
OTHER	178	3.4

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	380	7.4
ON PAROLE	215	4.2
ON PROBATION	327	6.3
ON ESCAPE/WALKOFF	116	2.2
IMMIGRATION	184	3.6
ON PR AND OTHER	74	1.4
OTHER EXCLUDING	180	3.5
NO HISTORY	1,649	31.9
NO PENDING	1,481	28.6
OTHER	564	10.9

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	1,878	36.3
WHITE,HISPANIC	1,697	32.8
BLACK,NON-HISPANIC	1,170	22.6
BLACK,HISPANIC	131	2.5
AMERICAN INDIAN/ ALASKAN NATIVE	139	2.7
ASIAN OR PACIFIC	66	1.3
OTHER	60	1.2
UNKNOWN	29	.6

EDUCATION	TOTAL	PCT.
NO EDUC	64	1.2
ELEMENTARY	768	14.9
SOME HS	1,239	24.0
VOCATIONAL	51	1.0
G.E.D.	425	8.2
HS GRAD	975	18.9
SOME COLLEGE	756	14.6
COLLEGE GRAD	175	3.4
POST GRAD	68	1.3
UNKNOWN	649	12.6

SEX AND AGE RANGE					
MALES	PCT.	AGE	FEMALE	PCT.	MARITAL STATUS
189	3.7	< 22	16	.3	MARRIED
423	8.2	22-24	40	.8	SINGLE
980	19.0	25-29	106	2.1	COHABITATING
1,031	19.9	30-34	96	1.9	DIVORCED
2,121	41.0	> 35	168	3.2	SEPARATE
34	.7	OTHER	2	.0	WIDOWED
					UNKNOWN

MARITAL STATUS	TOTAL	PCT.
MARRIED	1,486	28.7
SINGLE	1,655	32.0
COHABITATING	452	8.7
DIVORCED	700	13.5
SEPARATE	389	7.5
WIDOWED	51	1.0
UNKNOWN	437	8.5

OFFENSE LVL	TOTAL	PCT.
PETTY	68	1.3
MISDEMEANOR	57	1.1
FELONY	5,044	97.6

CITIZENSHIP	TOTAL	PCT.
US	3,168	61.3
LEGAL ALIEN	731	14.1
ILLEGAL ALIEN	977	18.9
UNKNOWN	294	5.7

TIME IN AREA	TOTAL	PCT.
00-01	1,509	29.2
02-06	428	8.3
07-12	309	6.0
13-59	568	11.0
60-OVER	2,356	45.6

ARREST STATUS	TOTAL	PCT.
ARRESTED	5,009	96.9
NOT-ARRESTED	161	3.1

RES STATUS	TOTAL	PCT.
OWN/BUYING	729	14.1
RENTING	1,942	37.6
NO CONTRIBUTE	1,239	24.0
NO PL TO LIVE	187	3.6
OTHER/UNKNOWN	1,073	20.8

EMPLOYED	TOTAL	PCT.
YES	2,138	41.4
NO	2,491	48.2
UNKNOWN	541	10.5

DRUG/ALCOHOL	TOTAL	PCT.
YES	1,610	31.1
NO	2,816	54.5
UNKNOWN	744	14.4

PENDING CASES	TOTAL	PCT.
FELONIES	832	16.1
MISDEMEANOR	201	3.9

TOTAL CASES ACTIVATED FOR IS 5170

Profile of Defendants Detained During a 3-Day Continuance Pending a Detention Hearing

DISTRICT: NATIONAL PSA STATISTICAL PROFILE FOR CLOSED RECORDS (3 DAY CONTINUANCES) 07/19/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	21	.8
ROBBERY	171	6.2
ASSAULT	52	1.9
BURGLARY	16	.6
LAR/THEFT	43	1.6
EMBEZZELMENT	5	.2
FRAUD	170	6.2
AUTO THEFT	14	.5
FORGERY	69	2.5
SEX OFFENSE	34	1.2
MARIHUANA	363	13.3
NARCOTICS	1,197	43.7
CONTROLLED SUBSTANCES	126	4.6
MISC OFFENSE	237	8.7
IMMIGRATION	115	4.2
LIQUOR/IRS	0	.0
FED STATUS	0	.0
OTHER	106	3.9

OFFENSE LVL	TOTAL	PCT.
PETTY	38	1.4
MISDEMEANOR	23	.8
FELONY	2,677	97.7

ARREST STATUS	TOTAL	PCT.
ARRESTED	2,676	97.7
NOT-ARRESTED	63	2.3

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	214	7.8
ON PAROLE	94	3.4
ON PROBATION	179	6.5
ON ESCAPE/WALKOFF	36	1.3
IMMIGRATION	62	2.3
ON PR AND OTHER	47	1.7
OTHER EXCLUDING	76	2.8
NO HISTORY	1,032	37.7
NO PENDING	814	29.7
OTHER	185	6.8

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	920	33.6
WHITE,HISPANIC	1,018	37.2
BLACK,NON-HISPANIC	564	20.6
BLACK,HISPANIC	86	3.1
AMERICAN INDIAN/ ALASKAN NATIVE	80	2.9
ASIAN OR PACIFIC	32	1.2
OTHER	22	.8
UNKNOWN	17	.6

SEX AND AGE RANGE				
MALES	PCT.	AGE	FEMALE	PCT.
97	3.5	< 22	14	.5
197	7.2	22-24	25	.9
534	19.5	25-29	62	2.3
540	19.7	30-34	68	2.5
1,099	40.1	> 35	103	3.8
20	.7	OTHER	1	.0

CITIZENSHIP	TOTAL	PCT.
US	1,602	58.5
LEGAL ALIEN	532	19.4
ILLEGAL ALIEN	469	17.1
UNKNOWN	136	5.0

RES STATUS	TOTAL	PCT.
OWN/BUYING	448	16.4
RENTING	1,125	41.1
NO CONTRIBUTE	702	25.6
NO PL TO LIVE	68	2.5
OTHER/UNKNOWN	396	14.5

DRUG/ALCOHOL	TOTAL	PCT.
YES	779	28.4
NO	1,646	60.1
UNKNOWN	314	11.5

EDUCATION	TOTAL	PCT.
NO EDUC	24	.9
ELEMENTARY	425	15.5
SOME HS	705	25.7
VOCATIONAL	25	.9
G.E.D.	213	7.8
HS GRAD	550	20.1
SOME COLLEGE	413	15.1
COLLEGE GRAD	124	4.5
POST GRAD	40	1.5
UNKNOWN	220	8.0

MARITAL STATUS	TOTAL	PCT.
MARRIED	848	31.0
SINGLE	871	31.8
COHABITATING	263	9.6
DIVORCED	360	13.1
SEPARATE	221	8.1
WIDOWED	26	.9
UNKNOWN	150	5.5

TIME IN AREA	TOTAL	PCT.
00-01	618	22.6
02-06	212	7.7
07-12	160	5.8
13-59	326	11.9
60-OVER	1,423	52.0

EMPLOYED	TOTAL	PCT.
YES	1,343	49.0
NO	1,191	43.5
UNKNOWN	205	7.5

PENDING CASES	TOTAL	PCT.
FELONIES	354	12.9
MISDEMEANOR	107	3.9

TOTAL CASES ACTIVATED FOR IS 2739

Profile of Defendants With Detention Hearings Held During Calendar Year 1988

DISTRICT: NATIONAL

PSA STATISTICAL PROFILE FOR CLOSED RECORDS (DEFENDANTS WITH DETENTION HEARINGS) 07/19/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	77	1.1
ROBBERY	509	7.2
ASSAULT	137	1.9
BURGLARY	47	.7
LAR/THEFT	181	2.6
EMBEZZELMENT	20	.3
FRAUD	502	7.1
AUTO THEFT	41	.6
FORGERY	161	2.3
SEX OFFENSE	82	1.2
MARIHUANA	738	10.5
NARCOTICS	2,690	38.3
CONTROLLED SUBSTANCES	365	5.2
MISC OFFENSE	695	9.9
IMMIGRATION	482	6.9
LIQUOR/IRS	0	.0
FED STATUS	0	.0
OTHER	302	4.3

OFFENSE LVL	TOTAL	PCT.
PETTY	147	2.1
MISDEMEANOR	81	1.2
FELONY	6,799	96.7

ARREST STATUS	TOTAL	PCT.
ARRESTED	6,788	96.6
NOT-ARRESTED	241	3.4

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	494	7.0
ON PAROLE	247	3.5
ON PROBATION	437	6.2
ON ESCAPE/WALKOFF	122	1.7
IMMIGRATION	196	2.8
ON PR AND OTHER	92	1.3
OTHER EXCLUDING	199	2.8
NO HISTORY	2,428	34.5
NO PENDING	2,137	30.4
OTHER	677	9.6

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	2,610	37.1
WHITE,HISPANIC	2,284	32.5
BLACK,NON-HISPANIC	1,574	22.4
BLACK,HISPANIC	155	2.2
AMERICAN INDIAN/ ALASKAN NATIVE	195	2.8
ASIAN OR PACIFIC	100	1.4
OTHER	78	1.1
UNKNOWN	35	.5

EDUCATION	TOTAL	PCT.
NO EDUC	86	1.2
ELEMENTARY	1,032	14.7
SOME HS	1,696	24.1
VOCATIONAL	64	.9
G.E.D.	537	7.6
HS GRAD	1,412	20.1
SOME COLLEGE	1,103	15.7
COLLEGE GRAD	272	3.9
POST GRAD	93	1.3
UNKNOWN	734	10.4

SEX AND AGE RANGE

MALES	PCT.	AGE	FEMALE	PCT.
256	3.6	< 22	38	.5
544	7.7	22-24	64	.9
1,341	19.1	25-29	161	2.3
1,367	19.4	30-34	154	2.2
2,851	40.6	> 35	253	3.6
38	.5	OTHER	2	.0

MARITAL STATUS	TOTAL	PCT.
MARRIED	2,116	30.1
SINGLE	2,237	31.8
COHABITATING	622	8.8
DIVORCED	983	14.0
SEPARATE	523	7.4
WIDOWED	62	.9
UNKNOWN	486	6.9

CITIZENSHIP	TOTAL	PCT.
US	4,433	63.1
LEGAL ALIEN	1,067	15.2
ILLEGAL ALIEN	1,199	17.1
UNKNOWN	330	4.7

TIME IN AREA	TOTAL	PCT.
00-01	1,886	26.8
02-06	533	7.6
07-12	393	5.6
13-59	801	11.4
60-OVER	3,416	48.6

RES STATUS	TOTAL	PCT.
OWN/BUYING	1,100	15.6
RENTING	2,752	39.2
NO CONTRIBUTE	1,717	24.4
NO PL TO LIVE	217	3.1
OTHER/UNKNOWN	1,243	17.7

EMPLOYED	TOTAL	PCT.
YES	3,156	44.9
NO	3,258	46.4
UNKNOWN	615	8.7

DRUG/ALCOHOL	TOTAL	PCT.
YES	2,103	29.9
NO	4,058	57.7
UNKNOWN	868	12.3

PENDING CASES	TOTAL	PCT.
FELONIES	997	14.2
MISDEMEANOR	266	3.8

TOTAL CASES ACTIVATED FOR IS 7029

Profile for All Closed Cases During Calendar 1988 Involving Defendants Held For 10 Days (3142 (d))

DISTRICT: NATIONAL PSA STATISTICAL PROFILE FOR CLOSED RECORDS (DEFENDANTS IN TEMPORARY DETENTION) 07/18/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	2	.2
ROBBERY	34	3.2
ASSAULT	8	.8
BURGLARY	5	.5
LAR/THEFT	41	3.9
EMBEZZELMENT	2	.2
FRAUD	239	22.7
AUTO THEFT	13	1.2
FORGERY	39	3.7
SEX OFFENSE	3	.3
MARIHUANA	105	10.0
NARCOTICS CONTROLLED SUBSTANCES	33	3.1
MISC OFFENSE	92	8.8
IMMIGRATION	223	21.2
LIQUOR/IRS	0	.0
FED STATUS	0	.0
OTHER	38	3.6

STATUS AT ARREST	TOTAL	PCT.
ON PRETHIAL RELEASE	54	5.1
ON PAROLE	96	9.1
ON PROBATION	154	14.7
ON ESCAPE/WALKOFF	11	1.0
IMMIGRATION	232	22.1
ON PR AND OTHER	8	.8
OTHER EXCLUDING	23	2.2
NO HISTORY	276	26.3
NO PENDING	138	13.1
OTHER	59	5.6

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	244	23.2
WHITE,HISPANIC	437	41.6
BLACK,NON-HISPANIC	231	22.0
BLACK,HISPANIC	115	10.9
AMERICAN INDIAN/ ALASKAN NATIVE	4	.4
ASIAN OR PACIFIC	9	.9
OTHER	7	.7
UNKNOWN	4	.4

EDUCATION	TOTAL	PCT.
NO EDUC	37	3.5
ELEMENTARY	242	23.0
SOME HS	252	24.0
VOCATIONAL	15	1.4
G.E.D.	67	6.4
HS GRAD	170	16.2
SOME COLLEGE	139	13.2
COLLEGE GRAD	35	3.3
POST GRAD	8	.8
UNKNOWN	86	8.2

SEX AND AGE RANGE MALES	PCT.	AGE	FEMALE	PCT.
46	4.4	< 22	8	.8
86	8.2	22-24	19	1.8
218	20.7	25-29	39	3.7
210	20.0	30-34	32	3.0
347	33.0	> 35	46	4.4
9	.9	OTHER	3	.3

MARITAL STATUS	TOTAL	PCT.
MARRIED	328	31.2
SINGLE	344	32.7
COHABITATING	121	11.5
DIVORCED	117	11.1
SEPARATE	65	6.2
WIDOWED	9	.9
UNKNOWN	67	6.4

OFFENSE LVL	TOTAL	PCT.
PETTY	34	3.2
MISDEMEANOR	13	1.2
FELONY	1,004	95.6

CITIZENSHIP	TOTAL	PCT.
US	424	40.3
LEGAL ALIEN	99	9.4
ILLEGAL ALIEN	478	45.5
UNKNOWN	50	4.8

TIME IN AREA	TOTAL	PCT.
00-01	262	24.9
02-06	87	8.3
07-12	54	5.1
13-59	122	11.6
60-OVER	526	50.0

ARREST STATUS	TOTAL	PCT.
ARRESTED	1,019	97.0
NOT-ARRESTED	32	3.0

RES STATUS	TOTAL	PCT.
OWN/BUYING	166	15.8
RENTING	398	37.9
NO CONTRIBUTE	318	30.3
NO PL TO LIVE	22	2.1
OTHER/UNKNOWN	147	14.0

EMPLOYED	TOTAL	PCT.
YES	506	48.1
NO	460	43.8
UNKNOWN	85	8.1

DRUG/ALCOHOL	TOTAL	PCT.
YES	278	26.5
NO	650	61.8
UNKNOWN	123	11.7

PENDING CASES	TOTAL	PCT.
FELONIES	153	14.6
MISDEMEANOR	31	2.9

TOTAL CASES ACTIVATED FOR IS 1051

Profile Of Closed Cases of Persons Convicted During Calendar 1988

DISTRICT: NATIONAL

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	99	.5
ROBBERY	742	3.6
ASSAULT	265	1.3
BURGLARY	116	.6
LAR/THEFT	1,204	5.8
EMBEZZELMENT	992	4.8
FRAUD	3,624	17.6
AUTO THEFT	247	1.2
FORGERY	1,086	5.3
SEX OFFENSE	226	1.1
MARIHUANA	1,854	9.0
NARCOTICS	4,634	22.5
CONTROLLED SUBSTANCES	788	3.8
MISC OFFENSE	2,043	9.9
IMMIGRATION	1,778	8.6
LIQUOR/IRS	6	.0
FED STATUS	0	.0
OTHER	923	4.5

OFFENSE LVL	TOTAL	PCT.
PETTY	887	4.3
MISDEMEANOR	1,044	5.1
FELONY	18,693	90.6

ARREST STATUS	TOTAL	PCT.
ARRESTED	15,085	73.1
NOT-ARRESTED	5,542	26.9

PSA STATISTICAL PROFILE FOR CONVICTED DEFENDANTS 07/19/89 (01/88-12/88)

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	1,055	5.1
ON PAROLE	437	2.1
ON PROBATION	1,139	5.5
ON ESCAPE/WALKOFF	158	.8
IMMIGRATION	481	2.3
ON PR AND OTHER	139	.7
OTHER EXCLUDING	330	1.6
NO HISTORY	8,988	43.6
NO PENDING	6,429	31.2
OTHER	1,471	7.1

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	9,751	47.3
WHITE,HISPANIC	4,904	23.8
BLACK,NON-HISPANIC	4,738	23.0
BLACK,HISPANIC	345	1.7
AMERICAN INDIAN/ ALASKAN NATIVE	415	2.0
ASIAN OR PACIFIC	243	1.2
OTHER	138	.7
UNKNOWN	93	.5

EDUCATION	TOTAL	PCT.
NO EDUC	160	.8
ELEMENTARY	2,188	10.6
SOME HS	4,460	21.6
VOCATIONAL	210	1.0
G.E.D.	1,407	6.8
HS GRAD	4,863	23.6
SOME COLLEGE	3,845	18.6
COLLEGE GRAD	1,067	5.2
POST GRAD	446	2.2
UNKNOWN	1,981	9.6

SEX AND AGE RANGE					
MALES	PCT.	AGE	FEMALE	PCT.	MARITAL STATUS
632	3.1	< 22	85	.4	MARRIED 7,422 36.0
1,342	6.5	22-24	297	1.4	SINGLE 5,735 27.8
3,223	15.6	25-29	737	3.6	COHABITATING 1,341 6.5
3,410	16.5	30-34	753	3.7	DIVORCED 2,980 14.4
8,639	41.9	> 35	1,503	7.3	SEPARATE 1,462 7.1
158	.8	OTHER	24	.1	WIDOWED 244 1.2
					UNKNOWN 1,443 7.0

CITIZENSHIP	TOTAL	PCT.
US	15,731	76.3
LEGAL ALIEN	1,774	8.6
ILLEGAL ALIEN	2,544	12.3
UNKNOWN	578	2.8

TIME IN AREA	TOTAL	PCT.
00-01	3,798	18.4
02-06	1,022	5.0
07-12	867	4.2
13-59	2,055	10.0
60-OVER	12,885	62.5

RES STATUS	TOTAL	PCT.
OWN/BUYING	5,003	24.3
RENTING	7,992	38.7
NO CONTRIBUTE	4,067	19.7
NO PL TO LIVE	324	1.6
OTHER/UNKNOWN	3,241	15.7

EMPLOYED	TOTAL	PCT.
YES	11,168	54.1
NO	7,719	37.4
UNKNOWN	1,740	8.4

DRUG/ALCOHOL	TOTAL	PCT.
YES	5,184	25.1
NO	13,107	63.5
UNKNOWN	2,336	11.3

PENDING CASES	TOTAL	PCT.
FELONIES	1,842	8.9
MISDEMEANOR	691	3.3

TOTAL CASES ACTIVATED FOR IS 20627

Profile of Closed Cases of Defendants Who Failed to Make Bail During Calendar 1988

DISTRICT: NATIONAL PSA STATISTICAL PROFILE FOR CLOSED RECORDS (DEFENDANTS DETAINED - BAIL NOT MADE) 07/18/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	10	.3
HOBBERY	144	4.4
ASSAULT	32	1.0
BURGLARY	19	.6
LAR/THEFT	144	4.4
EMBEZZELMENT	27	.8
FRAUD	263	8.0
AUTO THEFT	31	.9
FORGERY	99	3.0
SEX OFFENSE	19	.6
MARIHUANA	685	20.9
NARCOTICS	747	22.8
CONTROLLED SUBSTANCES	118	3.6
MISC OFFENSE	251	7.7
IMMIGRATION	511	15.6
LIQUOR/IRS	0	.0
FED STATUS	0	.0
OTHER	175	5.3

OFFENSE LVL	TOTAL	PCT.
PETTY	136	4.2
MISDEMEANOR	55	1.7
FELONY	3,083	94.1

ARREST STATUS	TOTAL	PCT.
ARRESTED	3,129	95.5
NOT-ARRESTED	146	4.5

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	152	4.6
ON PAROLE	80	2.4
ON PROBATION	170	5.2
ON ESCAPE/WALKOFF	19	.6
IMMIGRATION	72	2.2
ON PR AND OTHER	21	.6
OTHER EXCLUDING	76	2.3
NO HISTORY	1,424	43.5
NO PENDING	1,034	31.6
OTHER	227	6.9

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	814	24.9
WHITE,HISPANIC	1,586	48.4
BLACK,NON-HISPANIC	690	21.1
BLACK,HISPANIC	81	2.5
AMERICAN INDIAN/ ALASKAN NATIVE	39	1.2
ASIAN OR PACIFIC	27	.8
OTHER	26	.8
UNKNOWN	12	.4

SEX AND AGE RANGE				
MALES	PCT.	AGE	FEMALE	PCT.
141	4.3	< 22	19	.6
291	8.9	22-24	38	1.2
681	20.8	25-29	111	3.4
597	18.2	30-34	83	2.5
1,144	34.9	> 35	169	5.2
15	.5	OTHER	3	.1

CITIZENSHIP	TOTAL	PCT.
US	1,688	51.5
LEGAL ALIEN	651	19.9
ILLEGAL ALIEN	826	25.2
UNKNOWN	110	3.4

RES STATUS	TOTAL	PCT.
OWN/BUYING	557	17.0
RENTING	1,269	38.7
NO CONTRIBUTE	832	25.4
NO PL TO LIVE	74	2.3
OTHER/UNKNOWN	543	16.6

DRUG/ALCOHOL	TOTAL	PCT.
YES	742	22.7
NO	2,208	67.4
UNKNOWN	325	9.9

EDUCATION	TOTAL	PCT.
NO EDUC	64	2.0
ELEMENTARY	721	22.0
SOME HS	808	24.7
VOCATIONAL	45	1.4
G.E.D.	187	5.7
HS GRAD	616	18.8
SOME COLLEGE	420	12.8
COLLEGE GRAD	90	2.7
POST GRAD	17	.5
UNKNOWN	307	9.4

MARITAL STATUS	TOTAL	PCT.
MARRIED	1,072	32.7
SINGLE	1,027	31.4
COHABITATING	308	9.4
DIVORCED	396	12.1
SEPARATE	231	7.1
WIDOWED	24	.7
UNKNOWN	217	6.6

TIME IN AREA	TOTAL	PCT.
00-01	732	22.4
02-06	228	7.0
07-12	158	4.8
13-59	396	12.1
60-OVER	1,761	53.8

EMPLOYED	TOTAL	PCT.
YES	1,644	50.2
NO	1,391	42.5
UNKNOWN	240	7.3

PENDING CASES	TOTAL	PCT.
FELONIES	287	8.8
MISDEMEANOR	108	3.3

TOTAL CASES ACTIVATED FOR IS 3275

Profile of Defendants Released on Bail During Calendar 1988

DISTRICT: NATIONAL PSA STATISTICAL PROFILE FOR CLOSED RECORDS (DEFENDANTS RELEASED ON BAIL) 07/18/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	58	.4
ROBBERY	148	1.0
ASSAULT	223	1.5
BURGLARY	57	.4
LAR/THEFT	1,159	7.9
EMBEZZELMENT	1,026	7.0
FRAUD	3,275	22.3
AUTO THEFT	206	1.4
FORGERY	1,010	6.9
SEX OFFENSE	206	1.4
MARIHUANA	1,124	7.7
NARCOTICS	2,792	19.0
CONTROLLED SUBSTANCES	566	3.9
MISC OFFENSE	1,496	10.2
IMMIGRATION	337	2.3
LIQUOR/IRS	7	.0
FED STATUS	0	.0
OTHER	970	6.6

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	689	4.7
ON PAROLE	128	.9
ON PROBATION	677	4.6
ON ESCAPE/WALKOFF	17	.1
IMMIGRATION	47	.3
ON PR AND OTHER	63	.4
OTHER EXCLUDING	100	.7
NO HISTORY	7,339	50.1
NO PENDING	4,894	33.4
OTHER	706	4.8

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	8,392	57.2
WHITE,HISPANIC	1,818	12.4
BLACK,NON-HISPANIC	3,667	25.0
BLACK,HISPANIC	107	.7
AMERICAN INDIAN/ ALASKAN NATIVE	330	2.3
ASIAN OR PACIFIC	199	1.4
OTHER	86	.6
UNKNOWN	61	.4

EDUCATION	TOTAL	PCT.
NO EDUC	45	.3
ELEMENTARY	1,017	6.9
SOME HS	3,132	21.4
VOCATIONAL	134	.9
G.E.D.	934	6.4
HS GRAD	4,066	27.7
SOME COLLEGE	3,307	22.6
COLLEGE GRAD	1,005	6.9
POST GRAD	451	3.1
UNKNOWN	569	3.9

SEX AND AGE RANGE					
MALES	PCT.	AGE	FEMALE	PCT.	MARITAL STATUS
360	2.5	< 22	94	.6	MARRIED
747	5.1	22-24	282	1.9	SINGLE
1,812	12.4	25-29	659	4.5	COHABITATING
2,059	14.0	30-34	701	4.8	DIVORCED
6,485	44.2	> 35	1,453	9.9	SEPARATE
43	.3	OTHER	16	.1	WIDOWED
					UNKNOWN

MARITAL STATUS	TOTAL	PCT.
MARRIED	6,168	42.1
SINGLE	2,999	27.3
COHABITATING	700	4.8
DIVORCED	2,271	15.5
SEPARATE	1,003	6.8
WIDOWED	217	1.5
UNKNOWN	302	2.1

OFFENSE LVL	TOTAL	PCT.
PETTY	360	2.5
MISDEMEANOR	1,036	7.1
FELONY	13,261	90.5

CITIZENSHIP	TOTAL	PCT.
US	13,312	90.8
LEGAL ALIEN	929	6.3
ILLEGAL ALIEN	204	1.4
UNKNOWN	215	1.5

TIME IN AREA	TOTAL	PCT.
00-01	1,305	8.9
02-06	500	3.4
07-12	483	3.3
13-59	1,409	9.6
60-OVER	10,963	74.8

ARREST STATUS	TOTAL	PCT.
ARRESTED	8,891	60.6
NOT-ARRESTED	5,769	39.4

RES STATUS	TOTAL	PCT.
OWN/BUYING	4,693	32.0
RENTING	6,102	41.6
NO CONTRIBUTE	2,558	17.4
NO PL TO LIVE	86	.6
OTHER/UNKNOWN	1,221	8.3

EMPLOYED	TOTAL	PCT.
YES	9,347	63.8
NO	4,813	32.8
UNKNOWN	500	3.4

DRUG/ALCOHOL	TOTAL	PCT.
YES	3,378	22.7
NO	10,481	71.5
UNKNOWN	851	5.8

PENDING CASES	TOTAL	PCT.
FELONIES	822	5.6
MISDEMEANOR	483	3.3

TOTAL CASES ACTIVATED FOR IS 14660

Profile of Defendants Charged With Drug Offenses (Closed Cases Only)

DISTRICT: NATIONAL — PSA STATISTICAL PROFILE FOR CLOSED RECORDS (DRUG DEFENDANTS) — 07/19/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	0	.0
ROBBERY	0	.0
ASSAULT	0	.0
BURGLARY	0	.0
LAR/THEFT	0	.0
EMBEZZELMENT	0	.0
FRAUD	0	.0
AUTO THEFT	0	.0
FORGERY	0	.0
SEX OFFENSE	0	.0
MARIHUANA	2,471	26.4
NARCOTICS	5,814	62.2
CONTROLLED SUBSTANCES	983	10.5
MISC OFFENSE	0	.0
IMMIGRATION	0	.0
LIQUOR/IRS	0	.0
FED STATUS	0	.0
OTHER	81	.9

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	563	6.0
ON PAROLE	170	1.8
ON PROBATION	490	5.2
ON ESCAPE/WALKOFF	21	.2
IMMIGRATION	112	1.2
ON PR AND OTHER	67	.7
OTHER EXCLUDING	122	1.3
NO HISTORY	4,044	43.3
NO PENDING	3,168	33.9
OTHER	592	6.3

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	3,931	42.0
WHITE,HISPANIC	3,020	32.3
BLACK,NON-HISPANIC	1,926	20.6
BLACK,HISPANIC	211	2.3
AMERICAN INDIAN/ ALASKAN NATIVE	73	.8
ASIAN OR PACIFIC	91	1.0
OTHER	54	.6
UNKNOWN	43	.5

EDUCATION	TOTAL	PCT.
NO EDUC	64	.7
ELEMENTARY	1,122	12.0
SOME HS	2,387	25.5
VOCATIONAL	106	1.1
G.E.D.	599	6.4
HS GRAD	2,281	24.4
SOME COLLEGE	1,619	17.3
COLLEGE GRAD	389	4.2
POST GRAD	118	1.3
UNKNOWN	664	7.1

SEX AND AGE RANGE				
MALES	PCT.	AGE	FEMALE	PCT.
283	3.0	< 22	69	.7
641	6.9	22-24	148	1.6
1,621	17.3	25-29	345	3.7
1,702	18.2	30-34	335	3.6
3,687	39.4	> 35	516	5.5
40	.4	OTHER	6	.1

MARITAL STATUS	TOTAL	PCT.
MARRIED	3,255	34.8
SINGLE	2,902	31.0
COHABITATING	718	7.7
DIVORCED	1,314	14.1
SEPARATE	655	7.0
WIDOWED	89	1.0
UNKNOWN	416	4.4

OFFENSE LVL	TOTAL	PCT.
PETTY	0	.0
MISDEMEANOR	299	3.2
FELONY	9,050	96.8

CITIZENSHIP	TOTAL	PCT.
US	6,659	71.2
LEGAL ALIEN	1,454	15.6
ILLEGAL ALIEN	878	9.4
UNKNOWN	358	3.8

TIME IN AREA	TOTAL	PCT.
00-01	1,694	18.1
02-06	450	4.8
07-12	414	4.4
13-59	986	10.5
60-OVER	5,805	62.1

ARREST STATUS	TOTAL	PCT.
ARRESTED	8,251	88.3
NOT-ARRESTED	1,098	11.7

RES STATUS	TOTAL	PCT.
OWN/BUYING	2,242	24.0
RENTING	3,876	41.5
NO CONTRIBUTE	1,964	21.0
NO PL TO LIVE	98	1.0
OTHER/UNKNOWN	1,169	12.5

EMPLOYED	TOTAL	PCT.
YES	5,252	56.2
NO	3,542	37.9
UNKNOWN	555	5.9

DRUG/ALCOHOL	TOTAL	PCT.
YES	2,758	29.5
NO	5,697	60.9
UNKNOWN	894	9.6

PENDING CASES	TOTAL	PCT.
FELONIES	839	9.0
MISDEMEANOR	253	2.7

TOTAL CASES ACTIVATED FOR IS 9349

Profile of All Cases Opened During Calendar 1988

DISTRICT: NATIONAL

PSA STATISTICAL PROFILE FOR 07/19/89 (01/88-12/88)

OFFENSE CHRGED	TOTAL	PCT.
HOMICIDE	201	.5
ROBBERY	1,055	2.7
ASSAULT	512	1.3
BURGLARY	153	.4
LAR/THEFT	2,187	5.7
EMBEZZELMENT	1,517	3.9
FRAUD	5,891	15.3
AUTO THEFT	343	.9
FORGERY	1,564	4.1
SEX OFFENSE	321	.8
MARIHUANA	3,897	10.1
NARCOTICS	10,451	27.2
CONTROLLED SUBSTANCES	1,386	3.6
MISC OFFENSE	3,836	10.0
IMMIGRATION	2,893	7.5
LIQUOR/IRS	11	.0
FED STATUS	0	.0
OTHER	1 48	5.8

OFFENSE LVL	TOTAL	PCT.
PETTY	1,746	4.5
MISDEMEANOR	1,852	4.8
FELONY	34,828	90.6

ARREST STATUS	TOTAL	PCT.
ARRESTED	29,931	77.9
NOT-ARRESTED	8,505	22.1

DRUG/ALCOHOL	TOTAL	PCT.
YES	8,731	22.7
NO	25,424	66.1
UNKNOWN	4,281	11.1

CRIMINAL HISTORY INFORMATION

STATUS AT ARREST	TOTAL	PCT.
ON PRETRIAL RELEASE	2,126	5.5
ON PAROLE	849	2.2
ON PROBATION	1,981	5.2
ON ESCAPE/WALKOFF	302	.8
IMMIGRATION	654	1.7
ON PR AND OTHER	248	.6
OTHER EXCLUDING	503	1.3
NO HISTORY	17,500	45.5
NO PENDING	11,991	31.2
OTHER	2,280	5.9

RACE	TOTAL	PCT.
WHITE, NON HISPANIC	16,796	43.7
WHITE,HISPANIC	10,460	27.2
BLACK,NON-HISPANIC	8,681	22.6
BLACK,HISPANIC	779	2.0
AMERICAN INDIAN/ ALASKAN NATIVE	643	1.7
ASIAN OR PACIFIC	565	1.5
OTHER	362	.9
UNKNOWN	148	.4

EDUCATION	TOTAL	PCT.
NO EDUC	331	.9
ELEMENTARY	4,486	11.7
SOME HS	8,527	22.2
VOCATIONAL	402	1.0
G.E.D.	2,372	6.2
HS GRAD	8,782	22.8
SOME COLLEGE	7,216	18.8
COLLEGE GRAD	2,173	5.7
POST GRAD	859	2.2
UNKNOWN	3,288	8.6

SEX AND AGE RANGE					
MALES	PCT.	AGE	FEMALE	PCT.
1,503	3.9	< 22	264	.7
2,697	7.0	22-24	616	1.6
5,967	15.5	25-29	1,402	3.6
6,005	15.6	30-34	1,277	3.3
15,647	40.7	> 35	2,751	7.2

CITIZENSHIP	TOTAL	PCT.
US	28,294	73.6
LEGAL ALIEN	4,543	11.8
ILLEGAL ALIEN	4,418	11.5
UNKNOWN	1,181	3.1

RES STATUS	TOTAL	PCT.
OWN/BUYING	9,342	24.3
RENTING	15,393	40.0
NO CONTRIBUTE	7,612	19.8
NO PL TO LIVE	580	1.5
OTHER/UNKNOWN	5,509	14.3

MARITAL STATUS	TOTAL	PCT.
MARRIED	14,505	37.7
SINGLE	10,869	28.3
COHABITATING	2,569	6.7
DIVORCED	5,052	13.1
SEPARATE	2,562	6.7
WIDOWED	454	1.2

TIME IN AREA	TOTAL	PCT.
00-01	6,601	17.2
02-06	1,950	5.1
07-12	1,483	3.9
13-59	4,013	10.4
60-OVER	24,389	63.5

EMPLOYED	TOTAL	PCT.
YES	21,045	54.8
NO	14,332	37.3
UNKNOWN	3,059	8.0

TOTAL CASES ACTIVATED FOR IS 38436

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

June 6, 1989

The Honorable Edward R. Becker
United States Court of Appeals
for the Third Circuit
601 Market Street, Room 19614
Philadelphia, PA 19106

Dear Judge Becker:

In response to your request for information on pretrial detention and home confinement, our staff has prepared the following set of statistics.

On June 6, 1989, there were 3,597 pretrial detainees in Bureau of Prisons' facilities. In addition, there were approximately 1800 persons in detention status who had been convicted but who had not yet been sentenced. The figure of 1800 is an approximation, due to a variable lag in time before sentencing data is entered into the Sentry Inmate Data System. The cost of confinement in an MCC is $32.42 per day or $11,867 per year. The cost of confinement in Federal Detention Units within an FCI is $30.31 per day and $11,092 per year.

Regarding home confinement, the daily cost per offender is $14.50, while the extrapolated annual cost would be $5,307. In comparison, the average cost of confinement for an inmate in a contract half-way house is $30.77 per day or $11,261.22 per year. We estimate that approximately 85% of the individuals who currently go to CTC's after release could alternatively be placed in home confinement status with electronic monitoring. We estimate that if such alternative placement were effected for the 85% cohort, the annual savings to the Bureau of Prisons would be approximately $15 million.

I hope that these data are what you require. Please contact me if you have any further questions or need any further assistance.

Warm regards,

J. Michael Quinlan
Director

Education and Training Series

The Bail Reform Act of 1984

Federal Judicial Center

THE FEDERAL JUDICIAL CENTER

Board

The Chief Justice of the United States
Chairman

Judge Alvin B. Rubin
United States Court of Appeals for the Fifth Circuit

Judge Anthony M. Kennedy
United States Court of Appeals for the Ninth Circuit

Judge A. David Mazzone
United States District Court District of Massachusetts

Judge Jose A. Cabranes
United States District Court District of Connecticut

Judge William C. O'Kelley
United States District Court Northern District of Georgia

Chief Judge Martin V. B. Bostetter, Jr.
United States Bankruptcy Court Eastern District of Virginia

L. Ralph Mecham
Director of the Administrative Office of the United States Courts

---

Director
A. Leo Levin

Deputy Director
Charles W. Nihan

Division Directors

William B. Eldridge
Research

Alice L. O'Donnell
Inter-Judicial Affairs and Information Services

Daniel L. Skoler
Continuing Education and Training

Edwin L. Stoorza, Jr.
Innovations and Systems Development

Russell R. Wheeler
Special Educational Services

1520 H Street, N.W.
Washington, D.C. 20005
Telephone 202/633-6011

THE BAIL REFORM ACT OF 1984

By Deirdre Golash
Federal Judicial Center

1987

This publication was produced in furtherance of the Center's statutory mission to develop and conduct programs of continuing education and training for personnel of the federal judicial system. The selection and presentation of materials reflect the judgment of the author. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

Cite as D. Golash, The Bail Reform Act of 1984 (Federal Judicial Center 1987).

FJC-ETS-87-2

TABLE OF CONTENTS

PREFACE v

I. PRETRIAL RELEASE 1

A. Release on Personal Recognizance 1
B. Conditional Release 1
1. In General 1
2. Bail 2
C. Written Findings 2
D. Revocation and Modification of Release 3
1. Revocation for Violation of Release Conditions 3
2. Modification or Revocation Where Defendant Has Not Violated Release Conditions 3

II. PRETRIAL DETENTION 5

A. Statutory Grounds 5
B. Factors to Be Considered 5
C. Flight 6
1. Standard of Proof 6
2. Constitutionality 6
D. Dangerousness 6
1. Definition 6
2. Standard of Proof 7
3. Constitutionality 7
E. Detention Hearing 7
1. Statutory Requirements 7
2. Crime of Violence 8
3. Timing of Detention Motion and Hearing 8
a. "First Appearance" 8
F. Rebuttable Presumptions 14
1. The Two Presumptions 14
2. Application of Drug-and-Firearm-Offender Presumption 15
a. Ten-Year Maximum 15
b. Probable Cause and Grand Jury Indictments 15
c. Formal Charge Required 15
d. Effect of Presumption 16
e. Constitutionality 17
G. Evidence 17
1. Hearsay 18
2. Proffer 18

Contents

3. Cross-examination 18
4. In Camera 19
5. Electronic Surveillance 20
6. Psychiatric Examination 20
H. Conduct of Hearings Involving Multiple Defendants 20
I. Written Findings 21
J. Ten-Day Detention 21

III. MODIFICATION OF DETENTION ORDER 23
A. Changed Circumstances 23
B. Length of Detention 23

IV. REVIEW BY THE DISTRICT COURT 25

V. RELEASE OR DETENTION PENDING SENTENCE 27

VI. RELEASE OR DETENTION PENDING APPEAL 29
A. Release Requirements 29
B. Definition of "Substantial Question" 30
C. Definition of "Likely" 31
D. Applicability 32
E. Findings 32

VII. RELEASE OR DETENTION OF A MATERIAL WITNESS 33

VIII. SANCTIONS 35
A. Failure to Appear 35
B. Offense Committed While on Release 35
C. Violation of Release Condition 35

APPENDIX: The Bail Reform Act of 1984 37

TABLE OF CASES 53

PREFACE

Since publication of *The Crime Control and Fine Enforcement Acts of 1984: A Synopsis* (January 1985), by Anthony Partridge, numerous judges and magistrates have mentioned the value of that publication and their wish for an updated treatment of its contents. The present publication provides a summary of appellate case law interpreting various provisions of the Bail Reform Act of 1984 (18 U.S.C. §§ 3141–3150) from October 12, 1984, the effective date of the act, to January 13, 1987. It does not treat the other legislation covered by the synopsis, such as the insanity and forfeiture provisions, primarily because case law in areas other than bail reform is as yet relatively sparse. Other Federal Judicial Center educational programs and publications will cover these areas as appropriate. In particular, the Center plans to provide special educational programs to explicate the major changes that will ensue when sentencing guidelines become effective.

The Center's educational programs on all facets of the 1984 crime control legislation are the subject of continuing advice and direction from a Center committee appointed by Chief Justice Burger in 1985. Judge A. David Mazzone of the District of Massachusetts chairs the committee; it also includes Judges John D. Butzner, Jr. (Fourth Circuit), Edward R. Becker (Third Circuit), Gerald B. Tjoflat (Eleventh Circuit), and William H. Orrick, Jr. (Northern District of California). Members of the committee reviewed an earlier draft of this publication.

With few exceptions, this report provides only the holdings of cases; readers are urged to consult the cases themselves for a fuller understanding of the specific facts of a case and the reasoning of the court. Where there is disagreement among the circuits on a particular issue, the courts that have spoken on the issue are identified in the text. Where there is no disagreement, and the interpretation adopted by one or more courts appears uncontroversial, the specific courts that have addressed the issue may not be mentioned in the text. In every instance, the appropriate citations appear in the footnotes. A few district court cases are mentioned where they are considered particularly helpful, but no attempt has been made to provide a comprehensive treatment of cases at the trial court level.

Preface

New cases on the Bail Reform Act continue to appear with some regularity, although the initial spate of ground-breaking decisions has abated. The Supreme Court is expected to rule on the constitutionality of detention on the ground of dangerousness to the community early in 1987 (*United States v. Salerno,* 794 F.2d 64 (2d Cir.), *cert. granted,* 107 S. Ct. 397 (1986) (No. 86-87)). Oral argument was scheduled for January 21, 1987.

The Appendix reproduces the Bail Reform Act of 1984, as amended by the Criminal Law and Procedure Technical Amendments Act of 1986 (Pub. L. No. 99-646).

I. PRETRIAL RELEASE

A. Release on Personal Recognizance

Under section 3142(b), the defendant must be released on personal recognizance or unsecured personal bond unless the judicial officer determines "that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community."[1]

B. Conditional Release

1. In General

If the defendant is not released on personal recognizance or unsecured personal bond, the judicial officer must impose the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person and the safety of any other person and the community.[2] The court should determine appropriate release conditions based on an individual evaluation of the defendant.[3] The conditions must be relevant to the purposes of assuring appearance and safety.[4] Conditions of release vary with the circumstances of the case. The Third Circuit has approved house arrest, in combination with other conditions, as a method of assuring the safety of the community in certain circumstances.[5] Perhaps the most commonly imposed release condition is drug testing of the defendant.

---

1. 18 U.S.C. § 3142(b).

2. 18 U.S.C. § 3142(c)(1).

3. *See* United States v. Spilotro, 786 F.2d 808, 816 (8th Cir. 1986) (uniform application to all defendants in district of condition restricting association with felons was abuse of discretion).

4. *See* United States v. Rose, 791 F.2d 1477, 1480 (11th Cir. 1986) (condition that bail bond be retained by the clerk to pay any fine imposed on defendant was irrelevant to purpose of assuring appearance and thus violated Eighth Amendment prohibition on excessive bail).

5. United States v. Traitz, 807 F.2d 322, 326 (3d Cir. 1986) (2-1 decision).

2. Bail

The judicial officer "may not impose a financial condition that results in the pretrial detention of a person."[6] While acknowledging that bail may not be used to deny release altogether, the Seventh Circuit, in *United States v. Szott,* held that the statute does not require that a defendant be able to post bail "readily" and that "a court must be able to induce a defendant to go to great lengths to raise the funds without violating the condition in §3142(c)."[7] Several courts have held that a defendant may be detained where the posting of money bond is necessary to assure the defendant's appearance if released but the defendant is unable to post such a bond.[8]

The judicial officer must seek to impose conditions that will reasonably assure appearance and safety, but should not require a guarantee of either.[9]

C. Written Findings

Under Federal Rule of Appellate Procedure 9, district judges must provide written findings upon entry of an order imposing conditions of release, though no similar requirement is imposed on magistrates.[10] As the Third Circuit pointed out in *United States v. Coleman,* "when an order for release is contested, a statement of reasons is necessary so that we can intelligently perform our review function."[11]

---

6. 18 U.S.C. § 3142(c)(2). *See* United States v. Holloway, 781 F.2d 124, 127 (8th Cir. 1986).

7. 768 F.2d 159, 160 (7th Cir. 1985) (per curiam) ($1 million bail upheld).

8. United States v. Westbrook, 780 F.2d 1185, 1188 (5th Cir. 1986); United States v. Jessup, 757 F.2d 378, 388–89 (1st Cir. 1985). *See* United States v. Wong-Alvarez, 779 F.2d 583, 584 (11th Cir. 1985) (per curiam) (rejecting contention that a defendant unable to post bail must be released without financial conditions).

9. United States v. Orta, 760 F.2d 887, 891–92 (8th Cir. 1985). *Accord* United States v. Fortna, 769 F.2d 243, 250 (5th Cir. 1985).

10. United States v. Maull, 773 F.2d 1479, 1482 (8th Cir. 1985) (en banc); *see* United States v. Wong-Alvarez, 779 F.2d 583, 585 (11th Cir. 1985) (remand for statement of reasons for requiring particular type and amount of bond); United States v. Delker, 757 F.2d 1390, 1394 (3d Cir. 1985); United States v. Hurtado, 779 F.2d 1467, 1480–81 (11th Cir. 1985).

11. 777 F.2d 888, 892 (3d Cir. 1985). *See* United States v. Chimurenga, 760 F.2d 400, 406 (2d Cir. 1985) (absence of detailed findings supporting release order hampered review); United States v. Williams, 753 F.2d 329, 333 (4th Cir. 1985) (same).

D. Revocation and Modification of Release

1. Revocation for Violation of Release Conditions

Section 3148(b) provides for revocation of a release order upon motion of the government and after a hearing, if a condition of release is violated. A revocation order under section 3148(b) must be supported by the following findings:

> (1) . . .
> (A) probable cause to believe that the person has committed a . . . crime while on release; or
> (B) clear and convincing evidence that the person has violated any other condition of his release; and
> (2) . . .
> (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or
> (B) the person is unlikely to abide by any condition or combination of conditions of release.[12]

"Probable cause" under section 3148(b)(1)(A) means "that the facts available to the judicial officer 'warrant a man of reasonable caution in the belief' that the defendant has committed a crime while on bail."[13] A finding of probable cause to believe that the person committed a *felony* while on release gives rise to a rebuttable presumption that no release conditions can assure the safety of others.[14] Where the new charge is grounds for a detention hearing, the revocation hearing is separate from the section 3142(f) hearing on the new charge.[15]

The standard of proof for the section 3148(b)(2) findings is by a preponderance of the evidence.[16]

2. Modification or Revocation Where Defendant Has Not Violated Release Conditions

Section 3142(c)(3) provides that the judicial officer "may at any time amend [the] order to impose additional or different conditions of release."[17] The legislative history of the statute indicates that

---

12. 18 U.S.C. § 3148(b).
13. United States v. Gotti, 794 F.2d 773, 777 (2d Cir. 1986).
14. 18 U.S.C. § 3148(b).
15. *See* United States v. McKethan, 602 F. Supp. 719, 721–22 (D.D.C. 1985).
16. United States v. Gotti, 794 F.2d 773, 778 (2d Cir. 1986).
17. 18 U.S.C. § 3142(c)(3), as amended by Pub. L. No. 99-646, § 55(c)(3) (Nov. 10, 1986). The amending statute deletes the word *his* throughout subsection (c); as no replacement is specified, the word *the* has been inserted in brackets in the quoted sentence to preserve its original meaning.

authorization for amendment under this section is "based on the possibility that a changed situation or new information" comes to the attention of the court.[18] The Eighth Circuit has held that the unexpected ability of the defendant to meet the terms of his or her bail does not satisfy this requirement.[19]

See section E.3.a(1) in chapter 2 (p. 9) for a discussion of imposition of detention upon review of an initial release order.

---

18. United States v. Resek, 602 F. Supp. 1126, 1130 (S.D.N.Y. 1985), citing S. Rep. No. 225, 98th Cong., 1st Sess. 16 (1983). *See* United States v. Angiulo, 755 F.2d 969, 972 (1st Cir. 1985) (court has inherent power to modify or revoke previous bail orders; case concerns reconsideration of detention order).

19. United States v. Holloway, 781 F.2d 124, 126, 129 (8th Cir. 1986).

II. PRETRIAL DETENTION

A. Statutory Grounds

The judicial officer may order the defendant detained if he or she finds that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of the community.[20] Thus, a showing either that the defendant is likely to flee or that release will endanger others is sufficient to justify detention.[21]

B. Factors to Be Considered

Section 3142(g) sets forth the factors for the judicial officer to consider in determining whether to release or detain the defendant. They are—

> (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
>
> (2) the weight of the evidence against the person;
>
> (3) the history and characteristics of the person . . .; and
>
> (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.[22]

Of the four factors listed, the weight of the evidence against the defendant is considered least important.[23] The Second Circuit held in *United States v. Colombo* that the probable length of pretrial detention is not a proper factor to consider in determining whether to release or detain the defendant.[24]

---

20. 18 U.S.C. § 3142(e).

21. United States v. Fortna, 769 F.2d 243, 249 (5th Cir. 1985); United States v. Daniels, 772 F.2d 382, 383 (7th Cir. 1985).

22. 18 U.S.C. § 3142(g).

23. United States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986); United States v. Cardenas, 784 F.2d 937, 939 (per curiam), *vacated as moot*, 792 F.2d 906 (9th Cir. 1986); United States v. Motamedi, 767 F.2d 1403, 1408 (9th Cir. 1985).

24. 777 F.2d 96, 100 (2d Cir. 1985). *See also* United States v. Accetturo, 783 F.2d 382, 387-88 (3d Cir. 1986) (Constitution does not require consideration of length of

C. Flight

1. Standard of Proof

Most circuits have interpreted the statute as requiring that a finding that no conditions will reasonably assure the appearance of the defendant must be supported by a preponderance of the evidence, rather than by clear and convincing evidence.[25]

2. Constitutionality

Courts have rejected the argument that there is an absolute right to bail under the Eighth Amendment.[26] Detention based on likelihood of flight has been upheld against constitutional challenge.[27] The Second Circuit has held that under some circumstances, lengthy pretrial detention on the ground of risk of flight violates the due process prohibition against punishment prior to an adjudication of guilt.[28]

D. Dangerousness

1. Definition

A defendant may be detained on the ground of danger to the community even where there is no showing that he or she is likely to engage in physical violence. The legislative history of the statute indicates that Congress also regards drug trafficking as a danger to the community.[29] The Third Circuit has interpreted the statute to

---

pretrial detention). Where detention has in fact been prolonged, reconsideration of the detention order may be required. See section B, Length of Detention, in chapter 3 (p. 23).

25. United States v. Vortis, 785 F.2d 327, 328–29 (D.C. Cir.), *cert. denied*, 107 S. Ct. 148 (1986); United States v. Portes, 786 F.2d 758, 765 (7th Cir. 1985); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985); United States v. Fortna, 769 F.2d 243, 250 (5th Cir. 1985); United States v. Orta, 760 F.2d 887, 891 n.20 (8th Cir. 1985); United States v. Motamedi, 767 F.2d 1403, 1407 (9th Cir. 1985).

26. Carlson v. Landon, 342 U.S. 524, 544–46 (1952).

27. Bell v. Wolfish, 441 U.S. 520, 533–34 (1979); United States v. Melendez-Carrion, 790 F.2d 984, 996–97 (2d Cir. 1986).

28. United States v. Gonzales Claudio, 806 F.2d 334, 343 (2d Cir. 1986). See section B, Length of Detention, in chapter 3.

29. S. Rep. No. 225, 98th Cong., 1st Sess. 12–13 (1983). *See* United States v. Williams, 753 F.2d 329, 335 (4th Cir. 1985) (district court erred in failing to take into account drug dealing as a danger to the community); United States v. Perry, 788 F.2d 100, 113 (3d Cir.) (dictum), *cert. denied*, 107 S. Ct. 218 (1986); United States v. Leon, 766 F.2d 77, 81 (2d Cir. 1985) (dictum).

authorize pretrial detention on grounds of danger to the community only upon proof that the defendant will likely commit one of the offenses listed in the statute as grounds for a detention motion.[30]

2. Standard of Proof

A finding that no conditions will reasonably assure the safety of any other person or the community must be supported by clear and convincing evidence.[31]

3. Constitutionality

The Second Circuit has held pretrial detention based on danger to the community (as opposed to danger to specific witnesses[32]) unconstitutional, as an unwarranted deprivation of liberty under the due process clause of the Fifth Amendment.[33] Four other circuits—the First, Third, Seventh, and Eleventh—have rejected similar challenges.[34]

E. Detention Hearing

1. Statutory Requirements

Section 3142(f) provides that a detention hearing shall be held—

a. Upon motion of the government[35] in a case that involves—

---

30. United States v. Himler, 797 F.2d 156, 160 (3d Cir. 1986) (likelihood that defendant would commit another crime involving false identification was insufficient basis for pretrial detention).

31. 18 U.S.C. § 3142(f); United States v. Alatishe, 768 F.2d 364, 370 (D.C. Cir. 1985); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985).

32. The Second Circuit upheld the constitutionality of detention based on danger to specific witnesses in United States v. Gotti, 794 F.2d 773, 779 (2d Cir. 1986).

33. United States v. Salerno, 794 F.2d 64 (2d Cir.), *cert. granted,* 107 S. Ct. 397 (1986) (No. 86-87); United States v. Romano, 799 F.2d 17, 18 (2d Cir. 1986) (defendant could not be detained on ground of failure to rebut presumption of dangerousness; issuance of mandate stayed pending issuance of mandate in *Salerno*); *see* United States v. Melendez-Carrion, 790 F.2d 984, 1004 (2d Cir. 1986) (two members of three-judge panel found eight-month detention on ground of dangerousness unconstitutional; one of the judges based his conclusion on length of detention).

34. *See* United States v. Zannino, 798 F.2d 544, 546 (1st Cir. 1986) (adopting reasoning of *Salerno* dissent); United States v. Perry, 788 F.2d 100, 113 (3d Cir.) (no substantive due process violation in preventive detention where purpose is to protect community from distributors of dangerous drugs and users of firearms), *cert. denied,* 107 S. Ct. 218 (1986); United States v. Portes, 786 F.2d 758, 766 (7th Cir. 1985) (Congress may give courts power to deny bail under certain circumstances); United States v. Rodriguez, 803 F.2d 1102, 1103 (11th Cir. 1986).

35. The motion need not be in writing. United States v. Volksen, 766 F.2d 190, 192 (5th Cir. 1985).

(1) a crime of violence,
(2) an offense carrying a penalty of life imprisonment or death,
(3) a federal drug offense carrying a penalty of ten years or more, or
(4) any felony following convictions for two or more offenses of the above types, or two or more comparable state or local offenses, or a combination of such offenses;

b. Upon motion of the government *or* the court in a case that involves—
(1) serious risk of flight, or
(2) serious risk that the person will attempt to obstruct justice.[36]

2. Crime of Violence

The definition of "crime of violence" is limited by statute to:

> (A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.[37]

The Second Circuit has held conspiracy to commit armed robbery to be a crime of violence under this section.[38]

3. Timing of Detention Motion and Hearing

a. "First appearance"

Under the statute, the detention hearing is to be held "immediately" upon the defendant's "first appearance before the judicial officer" unless the government or the defendant moves for a continuance.[39]

The present section outlines the holdings of the circuit courts on the following specific questions: (1) May the court impose detention upon review of a release order? (2) May the government move for detention at a time later than the initial appearance? (3) How soon after the detention motion must the detention hearing be held? It

---

36. 18 U.S.C. § 3142(f), as amended by Pub. L. No. 99-646, §§ 55(c)(6), 72 (Nov. 10, 1986).
37. 18 U.S.C. § 3156(a)(4).
38. United States v. Chimurenga, 760 F.2d 400, 403-04 (2d Cir. 1985).
39. 18 U.S.C. § 3142(f).

is important to note initially that the interpretation of the "first appearance" requirement is still in flux. Although no circuit court has directly rejected another circuit's interpretation of the requirement, there are indications that the law on this issue may develop differently in the various circuits. For example, a majority of the Eighth Circuit in *United States v. Maull,* in upholding a detention order on motion of the court, emphasized that the detention hearing must be held soon after the motion for detention, while apparently imposing no deadline for the making of the motion.[40] The Eleventh Circuit in *United States v. Medina* similarly indicated that a detention motion and hearing are required at the initial appearance only if the defendant "is to be detained following that appearance."[41] In contrast, the Second Circuit in *United States v. Payden* emphasized the "unambiguous" language of the statute and interpreted it to preclude detention where no detention motion was made at the initial appearance.[42] While these cases are distinguishable on their facts,[43] they also reflect marked differences in approach. It remains to be seen, therefore, whether the various circuits will choose to follow the language of their own earlier cases or the holdings of other circuits in future cases that are less readily distinguishable on the facts.[44]

(1) May the court impose detention upon review of a release order?

Courts have interpreted section 3145(a) of the statute, which permits either the government or the defendant to seek review of release conditions, to authorize the court to impose detention at the time of such review.

---

40. 773 F.2d 1479, 1482–83 (8th Cir. 1985) (en banc).

41. 775 F.2d 1398, 1401 (11th Cir. 1985).

42. 759 F.2d 202, 204 (2d Cir. 1985) ("clear and unambiguous"); *see also* United States v. O'Shaughnessy, 764 F.2d 1035, 1038, *vacated on reh'g as moot,* 772 F.2d 112 (5th Cir. 1985) ("unambiguous mandatory language").

43. In *Payden,* the government first moved for detention two weeks after an arraignment at which neither party was aware of the availability of pretrial detention under the recently enacted Bail Reform Act of 1984. In *Maull,* detention was ordered on motion of the court upon defendant's section 3145(a) appeal of release conditions set by a magistrate. In *Medina,* the government first moved for detention at the defendant's first appearance before a second magistrate.

A number of courts have taken pains to distinguish *Payden. See* United States v. Dominguez, 783 F.2d 702, 704 n.2 (7th Cir. 1986); United States v. Fortna, 769 F.2d 243, 248 (5th Cir. 1985); United States v. Maull, 773 F.2d 1479, 1483–84 (8th Cir. 1985) (en banc); United States v. Medina, 775 F.2d 1398, 1400–01 (11th Cir. 1985).

44. The 5–4 decision in United States v. Maull, 773 F.2d 1479 (8th Cir. 1985) (en banc), illustrates the potential for disagreement on application of the statute to one set of facts.

The Third, Eighth, and Eleventh Circuits have approved imposition of detention following an initial release order on the ground that section 3145(a) authorizes the district court to conduct de novo review of a magistrate's release order.[45] These courts have reasoned that in order to conduct de novo review, the district court must have open to it all the options available to the magistrate. The Eleventh Circuit has extended the principle of de novo review to a magistrate's reconsideration of another magistrate's release order.[46] The Eighth Circuit has permitted imposition of detention by the district court upon the defendant's motion to amend the conditions of release.[47]

(2) May the government move for detention at a time later than the initial appearance?

Untimely detention motions have resulted in reversal of detention orders in several cases.[48] Conditions under which delayed detention motions may be acceptable are discussed below.

(a) Motion for revocation of release

A delayed motion for detention may be construed as a motion for revocation of release under section 3145(a). On this ground, the Eleventh Circuit upheld a magistrate's detention order issued on the basis of the same facts presented before another magistrate, who had ordered release.[49] The Eighth Circuit has held that the

---

45. United States v. Delker, 757 F.2d 1390, 1393-95 (3d Cir. 1985) (district court could conduct second evidentiary hearing; holding of detention hearing not limited to the one held at defendant's first appearance); United States v. Maull, 773 F.2d 1479, 1481-85 (8th Cir. 1985) (en banc) (5-4 decision) (district court could move for detention upon review of defendant's motion to reduce bail); United States v. Medina, 775 F.2d 1398, 1400-02 (11th Cir. 1985) (no motion for detention at initial appearance; second magistrate could impose detention on motion of government). These courts read the statute as continuing prior law, under which de novo review was the rule. See chapter 4, Review by the District Court (p. 25).

46. United States v. Medina, 775 F.2d 1398, 1402-03 (11th Cir. 1985) (second magistrate's order approved by district court).

47. United States v. Maull, 773 F.2d 1479, 1481, 1484-85 (8th Cir. 1985) (en banc) (5-4 decision). Courts have held, however, that amendment of a release order by the same judicial officer under section 3142(c) requires changed circumstances or new information. United States v. Holloway, 781 F.2d 124, 126-27, 128-29 (8th Cir. 1986); United States v. Resek, 602 F. Supp. 1126, 1129 (S.D.N.Y. 1985).

48. United States v. Holloway, 781 F.2d 124, 126-27 (8th Cir. 1986) (government could not move for amendment of release order on sole ground that defendant was unexpectedly able to meet the terms of his release); United States v. Payden, 759 F.2d 202, 203 (2d Cir. 1985) (government moved for detention two weeks after arraignment); United States v. O'Shaughnessy, 764 F.2d 1035, 1036-37, *vacated on reh'g as moot*, 772 F.2d. 112 (5th Cir. 1985) (government moved for detention five days after initial appearance).

49. United States v. Medina, 775 F.2d 1398, 1401-02 (11th Cir. 1985).

government must present new evidence to support a detention motion before a court that has ordered release on motion of the government.[50] Similarly, if release was ordered following a detention hearing, the 1986 amendment to section 3142(f) permits the court to reopen the hearing where there is newly discovered evidence relevant to the detention issue.[51]

(b) Following removal

Other courts have permitted the government to make a delayed motion for detention without a showing of changed circumstances where the defendant is arrested outside the charging district. The Second and Seventh Circuits have held that the detention motion may in that circumstance be made at the first appearance following removal.[52]

The Second Circuit offered this advice:

> Where practical, consideration should be given to affording the defendant arrested in his district of residence an opportunity in that district promptly to present locally available evidence pertinent to the issue of pretrial release so that a transcript of such evidence can be prepared and furnished to the judicial officer making the detention decision in the district of prosecution.[53]

The court also cautioned that removal should be accomplished expeditiously where detention is an issue.[54]

(c) Where defendant is detained under section 3142(d)

Under section 3142(d), a defendant who is on conditional release may be temporarily detained for up to ten days at the time of arrest for another offense to permit the appropriate officials to take him or her into custody.[55] If these authorities do not move to take the defendant into custody, a section 3142(f) hearing may be held. This hearing is separate from, and in addition to, the section 3142(d) hearing. The judicial officer cannot rely on facts previously found to support a subsection (d) detention.[56] The First Circuit has

---

50. United States v. Holloway, 781 F.2d 124, 129 (8th Cir. 1986).

51. 18 U.S.C. § 3142(f), as amended by Pub. L. No. 99-646, § 72(b) (Nov. 10, 1986).

52. United States v. Melendez-Carrion, 790 F.2d 984, 990 (2d Cir. 1986); United States v. Dominguez, 783 F.2d 702, 704–05 (7th Cir. 1986). *Cf.* United States v. Medina, 775 F.2d 1398 (11th Cir. 1985) (permitting government detention motion following transfer of defendant to another court within the same district).

53. United States v. Melendez-Carrion, 790 F.2d 984, 990 (2d Cir. 1986).

54. *Id.* at 992.

55. There are other categories of defendants who may be detained under section 3142(d). See section J of this chapter (p. 21) for a discussion of section 3142(d) detention.

56. United States v. Alatishe, 768 F.2d 364, 370 (D.C. Cir. 1985).

interpreted the statute as permitting the government to move for a section 3142(f) detention hearing at any time during the ten-day period.[57] The Fifth and District of Columbia Circuits, while interpreting the statute similarly, have indicated that the better practice is for the government to move under both sections at the defendant's initial appearance.[58] The Ninth Circuit has indicated in dictum that continuances under section 3142(f) should not be added to the ten-day detention period allowed by section 3142(d).[59]

The Seventh Circuit in *United States v. Lee* ruled that the government may move for pretrial detention under section 3142(f) while the defendant is detained under section 3142(d) and that the government's three-day continuance does not begin until the motion is made.[60]

As the First Circuit noted in *United States v. Vargas*, it is important for the judicial officer to make clear under which of the two provisions detention is being considered.[61] In that case, defendants already being detained under section 3142(d) appeared before a magistrate for arraignment. The government indicated that it would "seek to detain" the defendants. The magistrate, apparently believing that defense counsel had waived argument on the detention issue, ordered the defendants detained. One of the defendants subsequently moved for release upon expiration of the ten-day period under section 3142(d), arguing that no timely motion for detention under section 3142(e) had been made. While upholding the magistrate's detention order,[62] the First Circuit cautioned that

> in a situation involving the possibility of pretrial detention under section 3142(e), it is incumbent upon magistrates and district courts to adhere to the requirements of sections 3142(e) and 3142(f) and to clearly indicate when they are proceeding under those provisions so as to avoid the type of confusing circumstances that arose in this case.[63]

---

57. United States v. Vargas, 804 F.2d 157, 161 (1st Cir. 1986).

58. United States v. Becerra-Cobo, 790 F.2d 427, 430 (5th Cir. 1986); United States v. Alatishe, 768 F.2d 364, 368 (D.C. Cir. 1985).

59. United States v. Al-Azzawy, 768 F.2d 1141, 1146 (9th Cir. 1985).

60. 783 F.2d 92, 94 (7th Cir. 1986).

61. 804 F.2d 157, 162 (1st Cir. 1986).

62. The court of appeals noted that the magistrate had offered the defendants an opportunity for additional, individual hearings; that the magistrate held a second hearing six days later, immediately upon expiration of the section 3142(d) detention period; and that the district court also held a de novo hearing upon review of the magistrate's detention order. *Id.* at 160–62.

63. *Id.* at 162.

(3) How soon after the detention motion must the detention hearing be held?

Under the statute, the detention hearing must be held "immediately" unless the defendant or the government moves for a continuance. Because the defendant remains in custody during continuances, the statute sharply limits the circumstances in which they may be granted. Except for good cause, continuances are limited to three days on motion of the government and five days on motion of the defendant.

(a) Continuance on court's own motion

The statute provides for continuance of the detention hearing upon motion of defense counsel or the government, but makes no explicit provision for a continuance on the court's own motion. Two courts of appeals have held that detention hearings may not be continued on the court's own motion.[64] Other courts have permitted such continuances, but only in special circumstances.[65]

(b) Computation

Section 3142(f) provides that, except for good cause, a continuance on motion of the defendant may not exceed five days, and a continuance on motion of the government may not exceed three days.[66] There is some question whether the time computation for the short intervals set forth in section 3142(f) is covered by the exclusion of holidays and weekends under Federal Rule of Criminal Procedure 45(a). The two circuit courts that have ruled on this issue reached opposite conclusions. The Eleventh Circuit held in *United States v. Hurtado* that rule 45(a) is not applicable to this calculation.[67] The Second Circuit held to the contrary in *United States v. Melendez-Carrion.*[68]

---

64. United States v. Al-Azzawy, 768 F.2d 1141, 1146 (9th Cir. 1985); United States v. Hurtado, 779 F.2d 1467, 1475–76 (11th Cir. 1985).

65. United States v. Alatishe, 768 F.2d 364, 369 (D.C. Cir. 1985) (seven-day continuance on motion of the court upheld; delay caused in part by confusion over requirements of the new statute, and neither party objected to continuance) (court notes that "in future cases, except in the most compelling situations, the judicial officer should not act sua sponte to delay the detention hearing."). *See also* United States v. Fortna, 769 F.2d 243, 249 (5th Cir. 1985) (magistrate permitted to set detention hearing for five days later to enable defendant to obtain counsel).

66. Where the government requested a continuance, and the defendant acquiesced in the setting of the hearing for the following Monday, four days later, the Eleventh Circuit held that the defendant's acquiescence was equivalent to a request for a continuance of four days rather than three to avoid a Sunday hearing. United States v. Malekzadeh, 789 F.2d 850, 851 (11th Cir. 1986).

67. 779 F.2d 1467, 1474 n.8 (11th Cir. 1985).

68. 790 F.2d 984, 991 (2d Cir. 1986).

(c) Good cause

Requests for continuances in excess of the time periods provided by the statute must be supported by a showing of good cause.[69] The Ninth and Eleventh Circuits have held that the convenience of counsel or the court is not by itself sufficient to satisfy the good-cause requirement.[70] The Eleventh Circuit also held that even assuming that defense counsel's suggestion of a hearing date constituted a motion for a continuance, it was error for the magistrate to grant a continuance of more than five days in order to permit other defendants to obtain counsel.[71] The Second Circuit held the good-cause requirement to be satisfied by "substantial reasons pertinent to protection of the rights of the defendants."[72]

F. Rebuttable Presumptions

1. The Two Presumptions

The statute creates two rebuttable presumptions:

- No conditions of release will reasonably assure the safety of the community where the defendant is accused of one of numerous specified crimes, such as crimes of violence, *and* has previously been convicted of committing one of the specified crimes while free on bail (the "previous-violator presumption").
- No conditions of release will reasonably assure the defendant's appearance and the safety of the community where a judicial officer finds probable cause to believe that the defendant has committed a federal drug offense carrying a maximum prison term of ten years or more or has used a firearm to commit a felony (the "drug-and-firearm-offender presumption").[73]

---

69. 18 U.S.C. § 3142(f); United States v. Al-Azzawy, 768 F.2d 1141, 1146 (9th Cir. 1985) (eight-day continuance at the simple request of defense counsel was improper).

70. United States v. Al-Azzawy, 768 F.2d 1141, 1146 (9th Cir. 1985); United States v. Hurtado, 779 F.2d 1467, 1476 (11th Cir. 1985).

71. United States v. Hurtado, 779 F.2d 1467, 1474 n.7 (11th Cir. 1985) (eight-day delay).

72. United States v. Melendez-Carrion, 790 F.2d 984, 991-92 (2d Cir. 1986) (additional time necessary to obtain witnesses and affidavits from Puerto Rico and to enable English-speaking defense attorneys to obtain interpreters and effectively interview Spanish-speaking clients).

73. 18 U.S.C. § 3142(e).

As of this writing, there is no appellate case law specifically addressing the previous-violator presumption.[74]

2. Application of Drug-and-Firearm-Offender Presumption

a. Ten-year maximum

The Eleventh Circuit has held that in order for drug charges to trigger the drug-and-firearm-offender presumption, the defendant must be charged with at least one offense separately carrying a ten-year maximum sentence. The presumption does not arise simply because the combined maximum sentences on all drug charges exceed ten years.[75]

b. Probable cause and grand jury indictments

In cases in which a grand jury has returned an indictment charging a defendant with one of the predicate offenses, the statute does not require a judicial officer to make an independent finding of probable cause in order to invoke the drug-and-firearm-offender presumption. Most courts have held that the indictment by itself establishes probable cause to believe that the defendant committed the offense charged and triggers the presumption that the defendant constitutes a danger to the community and poses a risk of flight.[76]

c. Formal charge required

Even where there is probable cause to believe that a defendant appearing at a detention hearing on other charges may also have committed a firearm violation, the drug-and-firearm-offender presumption cannot arise if the defendant has not yet been charged with the firearm offense by a "valid complaint or indictment."[77]

---

74. The First Circuit indicated in dictum that its analysis of the drug-and-firearm-offender presumption (see section F.2.d in this chapter) would also apply to the previous-violator presumption. United States v. Jessup, 757 F.2d 378, 381 (1st Cir. 1985).

75. United States v. Hinote, 789 F.2d 1490, 1491 (11th Cir. 1986).

76. United States v. Vargas, 804 F.2d 157, 161 (1st Cir. 1986); United States v. Suppa, 799 F.2d 115, 118–19 (3d Cir. 1986); United States v. Dominguez, 783 F.2d 702, 706 n.7 (7th Cir. 1986); United States v. Contreras, 776 F.2d 51, 54–55 (2d Cir. 1985); United States v. Hazime, 762 F.2d 34, 37 (6th Cir. 1985); United States v. Hurtado, 779 F.2d 1467, 1477–79 (11th Cir. 1985) (2–1 decision); *contra* United States v. Cox, 635 F. Supp. 1047, 1052 (D. Kan. 1986).

77. United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985) (indictment for conspiracy to commit armed robbery; evidence indicated defendant had committed firearm offense in connection with conspiracy).

d. Effect of presumption

The drug-and-firearm-offender presumption imposes only a burden of production on defendants;[78] the burden of persuasion concerning the risk of flight and dangerousness remains with the government.[79] Those courts that have further elaborated on the meaning of the "burden of production" in this context have concluded that the introduction of relevant evidence by the accused does not eliminate the presumption entirely. Instead, the Second, Fifth, and Seventh Circuits have adopted the position, first articulated by the First Circuit in *United States v. Jessup,*[80] that the presumption "rebutted" by the defendant's evidence remains in the case as one factor of many to be considered by the judicial officer.[81] These courts have concluded that giving the presumption some weight, without shifting the burden of persuasion, accomplishes the legislative purpose of ensuring that judges and magistrates, "who typically focus only upon the particular cases before them,"[82] also take note of the congressional findings concerning the probable dangerousness and propensity to flee of offenders to whom the presumption is applicable.

On the question of what evidence is sufficient to rebut the presumption, the Seventh Circuit has held that the defendant need not produce evidence to rebut a finding of probable cause that he or she committed one of the predicate offenses or the general premise that, for example, drug trafficking is a danger to the community.[83] Rather, the defendant may produce evidence showing

---

78. Evidence rebutting the presumption of flight is not by itself sufficient to rebut the presumption of dangerousness. *See* United States v. Carbone, 793 F.2d 559, 561 (3d Cir. 1986) (per curiam) (2-1 decision) (under the circumstances, evidence normally adduced to rebut presumption of flight also rebutted presumption of dangerousness); United States v. Daniels, 772 F.2d 382, 383 (7th Cir. 1985) (assuming defendant showed he was unlikely to flee, he could still be detained on unrebutted presumption of dangerousness).

79. United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986); United States v. Perry, 788 F.2d 100, 115 (3d Cir.) (shifting burden of persuasion to defendant would increase due process concerns), *cert. denied,* 107 S. Ct. 218 (1986); United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986); United States v. Portes, 786 F.2d 758, 764 (7th Cir. 1985); United States v. Alatishe, 768 F.2d 364, 371 n.14 (D.C. Cir. 1985); United States v. Jessup, 757 F.2d 378, 381-84, 389 (1st Cir. 1985); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985); United States v. Fortna, 769 F.2d 243, 253 n.11 (5th Cir. 1985); United States v. Diaz, 777 F.2d 1236, 1237 (7th Cir. 1985); United States v. Hurtado, 779 F.2d 1467, 1470 n.4 (11th Cir. 1985); United States v. Orta, 760 F.2d 887, 891 n.17 (8th Cir. 1985) (dictum).

80. 757 F.2d 378, 383-84 (1st Cir. 1985).

81. United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986); United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986); United States v. Portes, 786 F.2d 758, 764 (7th Cir. 1985); United States v. Fortna, 769 F.2d 243, 251 (5th Cir. 1985); United States v. Diaz, 777 F.2d 1236, 1239 (7th Cir. 1985).

82. United States v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985).

83. United States v. Dominguez, 783 F.2d 702, 706 (7th Cir. 1986).

that "what is true in general is not true in the particular case,"[84] either because of the specific crimes charged or because of the defendant's particular circumstances. Section 3142(g) sets forth factors that may be relevant to establishing the defendant's circumstances, including marital status, employment, and lack of a prior criminal record.[85]

Where a defendant produces no evidence to rebut the drug-and-firearm-offender presumption, the Third, Seventh, and District of Columbia Circuits have held that the presumption alone is sufficient to support the conclusion that no conditions of release could reasonably assure the appearance of the defendant and the safety of the community.[86]

e. Constitutionality

The First Circuit has held that the presumption, when construed not to shift the burden of persuasion, does not violate the due process clause of the Fifth Amendment.[87]

The Third Circuit has held that because the presumption of dangerousness may place the defendant in the position of risking self-incrimination or submitting to pretrial detention, the judicial officer should grant use-fruits immunity to a defendant who seeks to rebut the presumption through his or her own testimony.[88]

G. Evidence

The Federal Rules of Evidence do not apply during a detention hearing.[89] The court has broad discretion to limit the presentation

---

84. *Id.* at 707, quoting United States v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985).

85. *See* United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986) (burden of production was met by evidence of employment, marital status, and lack of prior criminal record).

86. United States v. Perry, 788 F.2d 100, 107 (3d Cir.), *cert. denied*, 107 S. Ct. 218 (1986); United States v. Alatishe, 768 F.2d 364, 371 (D.C. Cir. 1985); United States v. Daniels, 772 F.2d 382, 383 (7th Cir. 1985) (no evidence to rebut presumption of dangerousness). *See* United States v. Carbone, 793 F.2d 559, 561–63 (3d Cir. 1986) (Garth, J., dissenting) (although government failed to show dangerousness by clear and convincing evidence, presumption should be given effect where defendant failed to produce evidence relevant to dangerousness). *But see* United States v. Cox, 635 F. Supp. 1047, 1051–52 (D. Kan. 1986) (presumption, standing alone, is inadequate to prove dangerousness).

87. United States v. Jessup, 757 F.2d 378, 384–87 (1st Cir. 1985).

88. United States v. Perry, 788 F.2d 100, 115–16 (3d Cir.), *cert. denied*, 107 S. Ct. 218 (1986).

89. 18 U.S.C. § 3142(f).

of evidence at the hearing. The court should keep in mind, however, that "a pretrial detention hearing may restrict for a significant time the liberty of a presumably innocent person."[90]

1. Hearsay

Hearsay evidence is admissible at a detention hearing.[91] However, courts "should be sensitive to the fact that Congress' authorization of hearsay evidence does not represent a determination that such evidence is always appropriate."[92] The court should assess the reliability of hearsay evidence and require corroboration when necessary.[93]

2. Proffer

The court may require the defendant to present a proffer rather than live testimony, the Third Circuit has held.[94] The Second Circuit has held that the government as well as the defendant may proceed by way of proffer.[95] The Third Circuit, however, has questioned the validity of relying upon a proffer by the government to establish probable cause that the accused committed one of the offenses giving rise to the drug-and-firearm-offender presumption under section 3142(e).[96]

3. Cross-examination

Section 3142(f) affords the defendant an opportunity to cross-examine witnesses who appear at the hearing, but makes no explicit provision for nonappearing witnesses. At least where the defendant

---

90. United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986), quoting United States v. Delker, 757 F.2d 1390, 1398 (3d Cir. 1985). *See also* United States v. Perry, 788 F.2d 100, 114 (3d Cir.) (procedural due process requirements for pretrial detention hearing approach those for criminal trials), *cert. denied*, 107 S. Ct. 218 (1986).

91. United States v. Cardenas, 784 F.2d 937, 938 (per curiam), *vacated as moot*, 792 F.2d 906 (9th Cir. 1986); United States v. Acevedo-Ramos, 755 F.2d 203, 208 (1st Cir. 1985) (magistrates and district courts may rely on hearsay evidence at detention hearing, where reliable); United States v. Delker, 757 F.2d 1390, 1397 (3d Cir. 1985); United States v. Fortna, 769 F.2d 243, 250 (5th Cir. 1985) (hearsay or other information not qualifying as admissible trial evidence is not necessarily an improper basis for a pretrial detention determination).

92. United States v. Accetturo, 783 F.2d 382, 389 (3d Cir. 1986).

93. *Id.* at 389, citing United States v. Acevedo-Ramos, 755 F.2d 203, 207–08 (1st Cir. 1985).

94. United States v. Delker, 757 F.2d 1390, 1395–96 (3d Cir. 1985).

95. United States v. Martir, 782 F.2d 1141, 1147 (2d Cir. 1986) (trial court need not require supporting evidence where accuracy of government's proffer is not challenged by defendant); *see also* United States v. Cardenas, 784 F.2d 937, 938 (per curiam), *vacated as moot*, 792 F.2d 906 (9th Cir. 1986) (government presentation of evidence by proffer was not due process violation).

96. United States v. Suppa, 799 F.2d 115, 118 (3d Cir. 1986) (dictum).

makes no specific proffer of how cross-examination will counter the government's proffered evidence, the court is not required to subpoena the government witnesses for cross-examination.[97] The Third Circuit noted, in upholding the district court's refusal to compel the appearance of a government witness, that defendants' offer of specific evidence showing unreliability, the lack of a need to protect confidentiality, and the prospect of lengthy detention were factors militating in favor of subpoenaing the requested witness.[98] The Eleventh Circuit has indicated that to the extent that a finding against the defendant rests on the weight of the evidence against him or her (section 3142(g)(2)), the defendant should have the opportunity to cross-examine witnesses.[99]

4. In Camera

The statute does not specifically address the use of evidence presented in camera. One court has held, and another has indicated in dictum, that reliance on evidence presented in camera is inconsistent with the Bail Reform Act's procedural protections, and both courts strongly discourage its use.[100] The Third Circuit has indicated that use of such testimony may compromise the constitutionality of the statute under the confrontation clause.[101] In a brief

---

97. United States v. Accetturo, 783 F.2d 382, 388 (3d Cir. 1986) (no error in failing to compel appearance of government witness for cross-examination where there was no reason to believe witness would have testified favorably to defendants); United States v. Winsor, 785 F.2d 755, 756–57 (9th Cir. 1986) (where defendant did not make proffer to show that government's proffer was incorrect, defendant did not have right to cross-examine investigators); United States v. Delker, 757 F.2d 1390, 1397–98 n.4 (3d Cir. 1985) (no error in declining to subpoena witnesses; question of whether there is a right to cross-examine where defendant makes specific proffer negating government's case left open). *See also* United States v. Cardenas, 784 F.2d 937, 938 (per curiam), *vacated as moot*, 792 F.2d 906 (9th Cir. 1986) (no error in refusing to subpoena witnesses where government withdrew proffered evidence challenged by defendant).

98. United States v. Accetturo, 783 F.2d 382, 388 (3d Cir. 1986) (no error in refusing to compel appearance because there was no reason to believe witness would have testified favorably to defendants).

99. United States v. Hurtado, 779 F.2d 1467, 1479–80 (11th Cir. 1985) (harmless error for district court to quash subpoenas of two Drug Enforcement Administration agents where finding that defendant was likely to flee was not predicated on weight of evidence).

100. United States v. Accetturo, 783 F.2d 382, 391 (3d Cir. 1986) (presentation in camera appropriate only when there is a most compelling need and no alternative means of meeting that need; district court erred in using such evidence); United States v. Leon, 766 F.2d 77, 80 n.3 (2d Cir. 1985) (ordinarily, court would remand for hearing question whether testimony presented in camera tainted conclusion of magistrate; here, nothing of consequence was revealed).

101. United States v. Perry, 788 F.2d 100, 117 (3d Cir.), *cert. denied*, 107 S. Ct. 218 (1986).

opinion later vacated on mootness grounds, the Ninth Circuit rejected a due process challenge to the use of evidence presented in camera.[102]

5. Electronic Surveillance

In *United States v. Angiulo,* the First Circuit held that the district court could rely on evidence obtained by electronic surveillance, the legality of which the accused had challenged, in considering whether to grant bail, at least until a court decided that the material was not legally obtained.[103] Use of such material is governed by the notice requirements of 18 U.S.C. § 2518(9).[104] Acknowledging the potential conflict between the ten-day-notice requirement of the latter statute and the requirement of a prompt detention hearing, the Second Circuit has pointed out that in cases in which prejudice to the defendant would result from waiver of the ten-day-notice period, the detention hearing may be continued for good cause under section 3142(f).[105]

6. Psychiatric Examination

The Second Circuit has held that the judicial officer may not order a psychiatric examination to determine the dangerousness of a defendant and must base that determination on evidence adduced at the detention hearing.[106]

H. Conduct of Hearings Involving Multiple Defendants

Cases involving multiple defendants pose special problems in complying with statutory requirements. Several circuits have cautioned district courts to treat such defendants individually, rather than making decisions about all defendants as a group. Specifically, the Eleventh Circuit has recommended that the court make indi-

---

102. United States v. Cardenas, 784 F.2d 937, 938 (per curiam), *vacated as moot,* 792 F.2d 906 (9th Cir. 1986) (examination of government exhibits in camera did not violate due process). *See also* United States v. Acevedo-Ramos, 755 F.2d 203, 207–09 (1st Cir. 1985) (magistrate may test veracity of hearsay by inspection of evidence in camera where confidentiality of sources is necessary) (dictum).

103. 755 F.2d 969, 974 (1st Cir. 1985).

104. United States v. Berrios-Berrios, 791 F.2d 246, 253 (2d Cir.), *cert. dismissed,* 107 S. Ct. 562 (1986).

105. United States v. Salerno, 794 F.2d 64, 70 (2d Cir.) (dictum), *cert. granted,* 107 S. Ct. 397 (1986) (No. 86-87). A motion by the defendant may be required before the court can grant such a continuance. See section E.3.a(3)(a) in this chapter (p. 13), discussing rulings on continuances on motion of the court.

106. United States v. Martin-Trigona, 767 F.2d 35, 38 (2d Cir. 1985).

vidual determinations on continuances rather than scheduling all hearings for the same date.[107] The Third Circuit has held that evidence offered at the hearings of codefendants may not be considered unless the defendant is given an opportunity to confront it at his or her own hearing.[108] Where detention hearings are required for a large number of codefendants, the Second Circuit suggests that the court consider holding a joint hearing, consolidating repetitious testimony, or assigning more than one judicial officer to conduct the hearings.[109]

I. Written Findings

Written findings and a written statement of reasons for detention are required if detention is ordered.[110] These findings should include a statement of the alternatives considered and the reasons for rejecting them.[111]

J. Ten-Day Detention

Under section 3142(d), the judicial officer may order an arrestee detained for up to ten days if the person is arrested while on pretrial release, presentence release, probation, or parole, or is an alien not admitted to permanent residence, *and* the judicial officer finds that he or she "may flee or pose a danger to any other person or the community."[112] The court must direct the attorney for the government to notify the appropriate authorities so that they can take the person into custody. If those authorities do not act within the ten-day period, a section 3142(f) hearing may be held if the statutory requirements are met.[113]

---

107. United States v. Hurtado, 779 F.2d 1467, 1476 (11th Cir. 1985).

108. United States v. Accetturo, 783 F.2d 382, 392 (3d Cir. 1986).

109. United States v. Melendez-Carrion, 790 F.2d 984, 992–93 (2d Cir. 1986) (individual hearings for large number of codefendants before one judicial officer took three weeks to complete).

110. 18 U.S.C. § 3142(i)(1); United States v. Vortis, 785 F.2d 327, 329 (D.C. Cir.) (per curiam) (remand for written findings to support detention order), *cert. denied,* 107 S. Ct. 148 (1986); United States v. Westbrook, 780 F.2d 1185, 1190 (5th Cir. 1986) (same); United States v. Hurtado, 779 F.2d 1467, 1480–81 (11th Cir. 1985) (same); United States v. Quinnones, 610 F. Supp. 74, 76 (S.D.N.Y. 1985) (magistrate failed to make written findings; defendant released).

111. United States v. Berrios-Berrios, 791 F.2d 246, 253–54 (2d Cir.) (remand for statement of reasons for rejecting release alternatives), *cert. dismissed,* 107 S. Ct. 562 (1986).

112. 18 U.S.C. § 3142(d).

113. See section E.3.a(2)(c) in this chapter (p. 11) for a discussion of the relationship between section 3142(d) and section 3142(f).

III. MODIFICATION OF DETENTION ORDER

A. Changed Circumstances

The First Circuit held in *United States v. Angiulo* that while no section of the statute authorized revocation of a detention order in light of changed circumstances, a court has inherent power to reconsider previous detention orders.[114] The 1986 amendment to section 3142(f) provides express authority for reopening the detention hearing when new information comes to light.[115]

B. Length of Detention

Speedy Trial Act[116] deadlines limit the length of pretrial detention under the statute. As a result of excludable-time provisions, however, defendants in complex cases may be detained far longer than the theoretical ninety-day maximum under the Speedy Trial Act, giving rise to due process concerns.

The Second Circuit has held that release of some defendants held for long periods may be required, whether detention is on the ground of dangerousness[117] or on the ground of flight risk.[118] That court emphasized that the determination of whether continued detention violates due process depends upon the particular circumstances of the case.[119] In evaluating whether continued detention

---

114. 755 F.2d 969, 972 (1st Cir. 1985). *See also* United States v. Colombo, 777 F.2d 96, 98 (2d Cir. 1985) (district judge held that magistrate had jurisdiction to reconsider detention order; ruling not challenged on appeal).

115. 18 U.S.C. § 3142(f), as amended by Pub. L. No. 99-646, § 72(c) (Nov. 10, 1986).

116. 18 U.S.C. §§ 3161–3174.

117. United States v. Melendez-Carrion, 790 F.2d 984, 1004 (2d Cir. 1986) (eight-month detention; remanded for setting of release conditions unless detention warranted on ground of flight); United States v. Frisone, 795 F.2d 1, 2 (2d Cir. 1986) (twelve-month detention; mandate stayed pending issuance of mandate in *Melendez-Carrion*).

118. United States v. Gonzales Claudio, 806 F.2d 334, 343 (2d Cir. 1986).

119. *Id.* at 340.

of defendants on the ground of flight risk exceeded due process limits, the Second Circuit considered the duration of the detention, the extent to which the prosecution was responsible for the delay, and the strength of the evidence indicating risk of flight.[120]

The First Circuit, in reversing a temporary release order granted to a defendant who had been confined for sixteen months, was careful to limit its holding to the unusual circumstances of the case, which concerned a dangerous defendant who, while physically unfit for trial, had continued to direct illegal activities from his hospital bed.[121]

The Third, Seventh, and Tenth Circuits have also indicated that lengthy pretrial detention may pose due process problems.[122]

---

120. *Id.;* United States v. Berrios-Berrios, 791 F.2d 246, 253 (2d Cir.) (eight-month detention not unconstitutional under the circumstances; determinations must be made on case-by-case basis), *cert. dismissed,* 107 S. Ct. 562 (1986); United States v. Colombo, 777 F.2d 96, 100–01 (2d Cir. 1985) (in case of lengthy incarceration, detention "might not survive a proper due process challenge").

121. United States v. Zannino, 798 F.2d 544, 547–48 (1st Cir. 1986). The court also took into account the seriousness of the charges, which included murder and conspiracy to commit murder, and the short period (one month) for which continued pretrial detention was anticipated. *Id.* at 547, 549.

122. *See* United States v. Accetturo, 783 F.2d 382, 388 (3d Cir. 1986) ("at some point, due process may require a release . . . or . . . a fresh proceeding at which more is required of the government"); United States v. Portes, 786 F.2d 758, 768 (7th Cir. 1985) ("at some point the length of delay may raise due process objections"); United States v. Theron, 782 F.2d 1510, 1516 (10th Cir. 1986) (release or trial within thirty days required on Speedy Trial Act grounds for defendant detained for more than four months; continued detention would pose constitutional problems); United States v. Accetturo, 783 F.2d 382, 396 (3d Cir. 1986) (Sloviter, J., dissenting) (urging time limit on pretrial detention).

IV. REVIEW BY THE DISTRICT COURT

The statute provides for district court review, upon motion by the government or the defendant, of a magistrate's release or detention order.[123] Specific provision is made for revocation of a magistrate's release order by the district court.[124]

The district court should conduct a de novo review of the magistrate's determination[125] and need not defer to the magistrate's findings or give specific reasons for rejecting them.[126] The court may take additional evidence or conduct a new evidentiary hearing where appropriate.[127] Following the hearing, the court should explain on the record the reasons for its decision.[128]

---

123. 18 U.S.C. § 3145.

124. 18 U.S.C. § 3145(a)(1). One court has held that a district court may impose detention on its own motion on a defendant's appeal of release conditions imposed by a magistrate. United States v. Maull, 773 F.2d 1479, 1482 (8th Cir. 1985) (en banc). See section E.3.a, "First Appearance," in chapter 2 (p. 8).

125. United States v. Delker, 757 F.2d 1390, 1394-95 (3d Cir. 1985); United States v. Fortna, 769 F.2d 243, 249 (5th Cir. 1985); United States v. Maull, 773 F.2d 1479, 1482 (8th Cir. 1985) (en banc); United States v. Hurtado, 779 F.2d 1467, 1480 (11th Cir. 1985); United States v. Medina, 775 F.2d 1398, 1402 (11th Cir. 1985).

126. United States v. Leon, 766 F.2d 77, 80 (2d Cir. 1985); United States v. Delker, 757 F.2d 1390, 1394-95 (3d Cir. 1985); United States v. Medina, 775 F.2d 1398, 1402 (11th Cir. 1985).

127. United States v. Delker, 757 F.2d 1390, 1393-94 (3d Cir. 1985) (district court may conduct new evidentiary hearing even where there is no new evidence); United States v. Fortna, 769 F.2d 243, 250 (5th Cir. 1985) (district court should consider record plus additional evidence). The *Delker* court suggests that the district court consider whether a transcript of the proceedings before the magistrate would facilitate its determination of whether more evidence is needed. 757 F.2d at 1395 n.3.

128. See section I, Written Findings, in chapter 2 (p. 21).

V. RELEASE OR DETENTION PENDING SENTENCE

Under section 3143(a), the court must order the defendant detained while awaiting imposition or execution of sentence unless the judicial officer finds by clear and convincing evidence that the defendant is *not* likely to flee or pose a danger to the safety of any other person or the community if released.[129] The burden of persuasion is on the defendant.[130]

As with respect to pretrial detention, dangerousness is not limited to physical danger; the Third Circuit has noted that the legislative history specifically mentions drug trafficking as a danger to the community.[131]

The Seventh Circuit has held that once the defendant has filed an appeal, release under this section is no longer appropriate. Instead, the defendant must meet the criteria of section 3143(b), governing release or detention pending appeal.[132]

When sentencing guidelines take effect, the presumption favoring detention under this section will apply only if the applicable guideline recommends a term of imprisonment.[133] There is no explicit rule when the guideline does not recommend a term of imprisonment.

According to the legislative history of the statute, section 3143(a) covers those awaiting "execution" of sentence to make clear that a person may be released for a short period after sentence "for such matters as getting his affairs in order prior to surrendering for service of sentence."[134] The language appears to accommodate voluntary surrender.

---

129. 18 U.S.C. § 3143(a).

130. United States v. Strong, 775 F.2d 504, 505 (3d Cir. 1985).

131. *Id.* at 507, citing S. Rep. No. 225, 98th Cong., 1st Sess. 12-13 (1983).

132. United States v. Thompson, 787 F.2d 1084, 1085 (7th Cir. 1986) (per curiam).

133. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, tit. II, § 223(f)(1) (Oct. 12, 1984), 98 Stat. 2028.

134. S. Rep. No. 225, 98th Cong., 1st Sess. 26 (1983).

VI. RELEASE OR DETENTION PENDING APPEAL

A. Release Requirements

The judicial officer must order a convicted defendant detained pending appeal unless the judicial officer finds, by clear and convincing evidence, that the defendant is not likely to flee or pose a danger to others *and,* by a preponderance of the evidence,[135] that "the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment."[136] The burden is on the defendant to show that all of these criteria are met.[137]

In considering bail pending appeal, the courts have been most concerned with the meaning of the requirement that the appeal "raise a substantial question of law or fact likely to result in reversal or an order for a new trial." (All of the cases discussed here were decided before the 1986 amendment of section 3143(b), which added the phrase "or a sentence that does not include a term of imprisonment."[138])

The Third Circuit in *United States v. Miller* pioneered a two-step analysis of the passage.[139] *Miller*'s analysis requires that a con-

---

135. United States v. Affleck, 765 F.2d 944, 953 n.15 (10th Cir. 1985) (en banc).

136. 18 U.S.C. § 3143(b), as amended by Pub. L. No. 99-646, § 51 (Nov. 10, 1986). The amendment added the final phrase "or a sentence that does not include a term of imprisonment."

137. United States v. Smith, 793 F.2d 85, 87-88 (3d Cir. 1986), *cert. denied,* 107 S. Ct. 877 (1987); United States v. Randell, 761 F.2d 122, 125 (2d Cir.), *cert. denied,* 106 S. Ct. 533 (1985); United States v. Miller, 753 F.2d 19, 24 (3d Cir. 1985); United States v. Crabtree, 754 F.2d 1200, 1201 (5th Cir.), *cert. denied,* 105 S. Ct. 3528 (1985); United States v. Valera-Elizondo, 761 F.2d 1020, 1025 (5th Cir. 1985); United States v. Bilanzich, 771 F.2d 292, 298 (7th Cir. 1985); United States v. Powell, 761 F.2d 1227, 1232 (8th Cir. 1985) (en banc) (burden of showing merit of appeal), *cert. denied,* 106 S. Ct. 1947 (1986); United States v. Handy, 761 F.2d 1279, 1283 (9th Cir. 1985); United States v. Affleck, 765 F.2d 944, 953 (10th Cir. 1985) (en banc); United States v. Giancola, 754 F.2d 898, 900-01 (11th Cir. 1985) (per curiam).

138. Pub. L. No. 99-646, § 51 (Nov. 10, 1986).

139. 753 F.2d 19 (3d Cir. 1985).

victed defendant seeking bail pending appeal show (1) that the pending appeal will involve a substantial question of law or fact, and (2) that if the question is decided in the defendant's favor, it will likely produce a reversal or a new trial of all counts on which imprisonment was imposed.[140] Other circuits have accepted the *Miller* approach, although some differ concerning the definition of "substantial question" and "likely."[141]

B. Definition of "Substantial Question"

The definition of "substantial question" has varied slightly among the circuits. The *Miller* court defined a substantial question as "one which is . . . novel, which has not been decided by controlling precedent, or which is fairly doubtful."[142] In response to the criticism that some questions meeting these criteria might nevertheless border on the frivolous, the Third Circuit stressed that the question must also be "significant."[143] The Eleventh Circuit, in *United States v. Giancola,* adopted the reasoning and conclusions of *Miller,* but defined a substantial question more strictly as "a 'close' question or one that very well could be decided the other way."[144] Most other circuits have adopted the *Giancola* test.[145] The Ninth

140. *Id.* at 24.

141. United States v. Shoffner, 791 F.2d 586, 588 (7th Cir. 1986) (per curiam); United States v. Bayko, 774 F.2d 516, 522–23 (1st Cir. 1985); United States v. Randell, 761 F.2d 122, 125 (2d Cir.), *cert. denied,* 106 S. Ct. 533 (1985); United States v. Valera-Elizondo, 761 F.2d 1020, 1024 (5th Cir. 1985); United States v. Pollard, 778 F.2d 1177, 1181–82 (6th Cir. 1985); United States v. Bilanzich, 771 F.2d 292, 298 (7th Cir. 1985); United States v. Greenberg, 772 F.2d 340, 341 (7th Cir. 1985); United States v. Powell, 761 F.2d 1227, 1231 (8th Cir. 1985) (en banc), *cert. denied,* 106 S. Ct. 1947 (1986); United States v. Handy, 761 F.2d 1279, 1283 (9th Cir. 1985); United States v. Affleck, 765 F.2d 944, 952 (10th Cir. 1985) (en banc); United States v. Giancola, 754 F.2d 898, 900 (11th Cir. 1985) (per curiam).

142. United States v. Miller, 753 F.2d 19, 23 (3d Cir. 1985).

143. United States v. Smith, 793 F.2d 85, 87–89 (3d Cir. 1986), *cert. denied,* 107 S. Ct. 877 (1987).

144. 754 F.2d 898, 900–01 (11th Cir. 1985) (per curiam). There is disagreement about whether the *Giancola* definition is indeed different from that of *Miller. Compare* United States v. Smith, 793 F.2d 85, 89 (3d Cir. 1986) (rejecting *Giancola*), *cert. denied,* 107 S. Ct. 877 (1987), *and* United States v. Affleck, 765 F.2d 944, 952 (10th Cir. 1985) (en banc) (*Giancola* is stricter than *Miller*), *with* United States v. Randell, 761 F.2d 122, 125 (2d Cir.), *cert. denied,* 106 S. Ct. 533 (1985) (*Miller, Handy,* and *Giancola* definitions do not differ significantly).

145. United States v. Shoffner, 791 F.2d 586, 589 (7th Cir. 1986) (per curiam); United States v. Thompson, 787 F.2d 1084, 1085 (7th Cir. 1986) (per curiam); United States v. Bayko, 774 F.2d 516, 523 (1st Cir. 1985); United States v. Randell, 761 F.2d 122, 125 (2d Cir.), *cert. denied,* 106 S. Ct. 533 (1985); United States v. Valera-Elizondo, 761 F.2d 1020, 1024 (5th Cir. 1985); United States v. Pollard, 778 F.2d 1177, 1182 (6th Cir. 1985); United States v. Bilanzich, 771 F.2d 292, 298–99 (7th Cir. 1985); United States v. Greenberg, 772 F.2d 340, 341 (7th Cir. 1985); United States v. Molt, 758

Circuit, while agreeing with much of the *Giancola* court's reasoning, declined to endorse the characterization of a substantial question as a "close" question, holding instead that the proper formulation is that the question be "fairly debatable."[146] The Third Circuit has since indicated its preference for the "fairly debatable" criterion.[147] The Eighth Circuit has expressly rejected that standard.[148]

C. Definition of "Likely"

The *Miller* court expressly rejected the literal interpretation of "likely to result in reversal or an order for a new trial," which implies that a court should grant bail pending appeal only if it finds that its own rulings are likely to be reversed.[149] Instead, the Third Circuit held that reversal or a new trial is "likely" only if the substantial question to be raised on appeal is "so integral to the merits of the conviction on which defendant is to be imprisoned that a contrary appellate holding is likely to require reversal of the conviction."[150] A substantial question concerning only harmless error, or a question not adequately preserved for appeal, would not meet this requirement.[151]

Several courts have adopted the *Miller* definition of "likely" without further elaboration.[152] Others have further defined

---

F.2d 1198, 1200 (7th Cir. 1985); United States v. Powell, 761 F.2d 1227, 1231 (8th Cir. 1985) (en banc), *cert. denied*, 106 S. Ct. 1947 (1986); United States v. Affleck, 765 F.2d 944, 952 (10th Cir. 1985) (en banc).

146. United States v. Handy, 761 F.2d 1279, 1281-83 (9th Cir. 1985). Judge Farris, dissenting, viewed the "fairly debatable" criterion as overly lenient and would have adopted the *Giancola* definition. *Id.* at 1285.

147. United States v. Smith, 793 F.2d 85, 89-90 (3d Cir. 1986), *cert. denied*, 107 S. Ct. 877 (1987). Judge Mansmann's opinion for the court also emphasized that the question presented must be "significant." Of the three judges on the panel, two (Judge Mansmann and Judge Pollak, sitting by designation) agreed with this construction of the statute, but disagreed about its application to the facts of the case. The third judge (Judge Hunter) concurred in the result, but would have followed *Giancola* on the construction of the statute. *Id.* at 91.

148. United States v. Powell, 761 F.2d 1227, 1232 (8th Cir. 1985) (en banc), *cert. denied*, 106 S. Ct. 1947 (1986).

149. United States v. Miller, 753 F.2d 19, 23 (3d Cir. 1985).

150. *Id.*

151. *Id.*

152. United States v. Bayko, 774 F.2d 516, 522 (1st Cir. 1985); United States v. Randell, 761 F.2d 122, 125 (2d Cir.), *cert. denied*, 106 S. Ct. 533 (1985); United States v. Affleck, 765 F.2d 944, 953 (10th Cir. 1985) (en banc); United States v. Giancola, 754 F.2d 898, 900 (11th Cir. 1985) (per curiam).

"likely" in the context of reversal or remand as "more probable than not."[153]

D. Applicability

The provisions of the Bail Reform Act of 1984 concerning release or detention pending appeal apply only to "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari."[154] They do not apply to convicted defendants seeking postconviction relief.[155]

The District of Columbia Circuit, in *United States v. Kelly,* held that, as under prior law, bail is not available pending appeal of the denial of a motion for a new trial made pursuant to Federal Rule of Criminal Procedure 33.[156]

E. Findings

The district court must state on the record its reasons for denying release pending appeal.[157]

---

153. United States v. Valera-Elizondo, 761 F.2d 1020, 1025 (5th Cir. 1985); United States v. Pollard, 778 F.2d 1177, 1182 (6th Cir. 1985); United States v. Bilanzich, 771 F.2d 292, 299 (7th Cir. 1985); United States v. Powell, 761 F.2d 1227, 1233 (8th Cir. 1985) (en banc), *cert. denied,* 106 S. Ct. 1947 (1986).

154. 18 U.S.C. § 3143(b).

155. Cherek v. United States, 767 F.2d 335, 337 (7th Cir. 1985).

156. 790 F.2d 130, 139 (D.C. Cir. 1986).

157. United States v. Wheeler, 795 F.2d 839 (9th Cir. 1986) (remand for statement of reasons). The statement of reasons may be made either through written findings or through a transcript of an oral statement. *Id.* at 841.

VII. RELEASE OR DETENTION OF A MATERIAL WITNESS

As under prior law, material witnesses are subject to detention if certain conditions, including the inadequacy of preserving the witness's testimony through deposition, are met.[158] Material witnesses arrested pursuant to section 3144 have a right to a detention hearing and to appointed counsel where they are unable to retain counsel, one district court has held.[159]

---

158. 18 U.S.C. § 3144.

159. *See In re* Class Action Application for Habeas Corpus on Behalf of All Material Witnesses in the Western District of Texas, 612 F. Supp. 940, 942–43 (W.D. Tex. 1985).

VIII. SANCTIONS

A. Failure to Appear

Section 3146 specifies the sanctions for failure to appear in court and makes them explicitly applicable to failure to surrender for service of sentence.[160]

B. Offense Committed While on Release

If a person on release under the act commits another offense, a term of imprisonment in addition to that imposed for the offense itself is prescribed.[161] The Second Circuit held in *United States v. Rodriguez* that this portion of the prison term may not be suspended.[162]

C. Violation of Release Condition

In addition to revocation of release, discussed in section D.1 of chapter 1, the statute provides for prosecution for contempt for violation of a release condition.[163]

---

160. 18 U.S.C. § 3146(b).

161. 18 U.S.C. § 3147. Note that the mandatory minimum terms (ninety days for a misdemeanor and two years for a felony) specified under this section are in effect only until sentencing guidelines become effective. Pub. L. No. 98-473, tit. II, § 223(g) (Oct. 12, 1984), 98 Stat. 2028; Pub. L. No. 99-217, § 4 (Dec. 26, 1985), 99 Stat. 1728.

162. 794 F.2d 24, 28 (2d Cir. 1986).

163. 18 U.S.C. § 3148(c).

APPENDIX
The Bail Reform Act of 1984

Pub. L. No. 98-473, tit. II (Oct. 12, 1984),
98 Stat. 1976, as amended by Pub. L. No. 99-217
(Dec. 26, 1985), 99 Stat. 1728, and Pub. L. No.
99-646 (Nov. 10, 1986)

THE BAIL REFORM ACT OF 1984

18 U.S.C. §§ 3141-3150, 3156
As Amended Through January 13, 1987

§ 3141. Release and detention authority generally

(a) Pending trial.—A judicial officer authorized to order the arrest of a person under section 3041 of this title before whom an arrested person is brought shall order that such person be released or detained, pending judicial proceedings, under this chapter.

(b) Pending sentence or appeal.—A judicial officer of a court of original jurisdiction over an offense, or a judicial officer of a Federal appellate court, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person be released or detained under this chapter.

§ 3142. Release or detention of a defendant pending trial

(a) In general.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

(1) released on personal recognizance or upon execution of an unsecured appearance bond under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) Release on personal recognizance or unsecured appearance bond.—The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appear-

ance of the person as required or will endanger the safety of any other person or the community.

(c) Release on conditions.—(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or any other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol de-

pendency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

(xii) execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person. (3) The judicial officer may at any time amend [the] order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion.—If the judicial officer determines that—

(1) the person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) the person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays,

and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, the person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) Detention.—If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(1) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection(f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(2) the offense described in paragraph (1) of this subsection was committed while the person was on release pending trial for a Federal, State, or local offense; and

(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of a person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), section 1 of

the Act of September 15, 1980 (21 U.S.C. 955a), or an offense under section 924(c) of title 18 of the United States Code.

(f) Detention hearing.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of the person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); or

(D) any felony if the person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if circumstances giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves—

(A) a serious risk that the person will flee; or

(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the Government may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on the motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented

by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

(g) Factors to be considered.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug and alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(2)(K) or (c)(2)(L) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an

inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

Note: Pub. L. No. 99-646, § 55 (Nov. 10, 1986), redesignated subsections (c)(2)(K) and (c)(2)(L) as (c)(1)(B)(xi) and (c)(1)(B)(xii), respectively. No conforming change was made to the reference to those subsections in this paragraph.

(h) Contents of release order.—In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) Contents of detention order.—In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the

person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) Presumption of innocence.—Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

§ 3143. Release or detention of a defendant pending sentence or appeal

(a) Release or detention pending sentence.—The judicial officer shall order that a person who has been found guilty of an offense and who is waiting imposition or execution of sentence, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with the provisions of section 3142(b) or (c).

(b) Release or detention pending appeal by the defendant.—The judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(2) that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title.

(c) Release or detention pending appeal by the government.—The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States under section 3731 of this title, in accordance with the provisions of section 3142 of this

title, unless the defendant is otherwise subject to a release or detention order.

Note: When sentencing guidelines go into effect, this section will be amended, in subsection (a), by adding "other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment," after "sentence,"; and by adding at the end of subsection (c) the following:

"Except as provided in subsection (b) of this section, the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, shall—

(1) if the person has been sentenced to a term of imprisonment, order that person detained; and

(2) in any other circumstance, release or detain the person under section 3142."

Pub. L. No. 98-473, tit. II, § 223(f) (Oct. 12, 1984), 98 Stat. 2028; Pub. L. No. 99-217, § 4 (Dec. 26, 1985), 99 Stat. 1728; Pub. L. No. 99-646, § 51 (Nov. 10, 1986).

---

§ 3144. Release or detention of a material witness

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown to be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

§ 3145. Review and appeal of a release or detention order

(a) Review of a release order.—If a person is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court—

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) Review of a detention order.—If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) Appeal from a release or detention order.—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly.

§ 3146. Penalty for failure to appear

(a) Offense.—Whoever, having been released under this chapter knowingly—

(1) fails to appear before a court as required by the conditions of release; or

(2) fails to surrender for service of sentence pursuant to a court order;

shall be punished as provided in subsection (b) of this section.

(b) Punishment.—

(1) The punishment for an offense under this section is—

(A) If the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for—

(i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;

(ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;

(iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or

(iv) a misdemeanor, a fine under this chapter or imprisonment for not more than one year, or both; and

(B) if the person was released for appearance as a material witness, a fine under this chapter or imprisonment for not more than one year, or both.

(2) A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.

(c) Affirmative defense.—It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(d) Declaration of forfeiture.—If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) of this title or is subject to the release condition set forth in clause (xi) or (xii) of section 3142(c)(1)(B) of this title, the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

§ 3147. Penalty for an offense committed while on release

A person convicted of an offense committed while released under this chapter shall be sentenced, in addition to the sentence prescribed for the offense, to—

(1) a term of imprisonment of not less than two years and not more than ten years if the offense is a felony; or

(2) a term of imprisonment of not less than ninety days and not more than one year if the offense is a misdemeanor. A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

Note: When sentencing guidelines go into effect, this section will be amended as follows: in paragraph (1), by deleting "not less than two years and" and, in paragraph (2), by deleting "not less than ninety days and." Pub. L. No. 98-473, tit. II, § 223(f) (Oct. 12, 1984), 98 Stat. 2028; Pub. L. No. 99-217, § 4 (Dec. 26, 1985), 99 Stat. 1728.

---

§ 3148. Sanctions for violation of a release condition

(a) Available sanctions.—A person who has been released pursuant to the provisions of section 3142 of this title, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

(b) Revocation of release.—The attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judicial officer in the district in which such person's arrest was ordered for a proceeding in accordance with this section. To the extent practicable, a person charged with violating the condition of release that such person not commit a Federal, State, or local crime during the period of release, shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated. The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer—

(1) finds that there is—

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that—

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community. If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, the judicial officer shall treat the person in accordance with the provisions of section 3142 of this title and may amend the conditions of release accordingly.

(c) Prosecution for contempt.—The judicial officer may commence a prosecution for contempt, pursuant to the provisions of section 401 of this title, if the person has violated a condition of release.

§ 3149. Surrender of an offender by a surety

A person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, and if so arrested, shall be delivered promptly to a United States marshal and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of section 3148(b) whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond in accordance with the provisions of Rule 46 of the Federal Rules of Criminal Procedure. The person so committed shall be held in official detention until released pursuant to this chapter or another provision of law.

§ 3150. Applicability to a case removed from a State court

The provisions of this chapter apply to a criminal case removed to a Federal court from a State court.

§ 3156. Definitions

(a) As used in sections 3141-3150 of this chapter—

(1) the term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia;

(2) the term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress;

(3) the term "felony" means an offense punishable by a maximum term of imprisonment of more than one year, and

(4) the term "crime of violence" means—

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

TABLE OF CASES

Bell v. Wolfish, 441 U.S. 520 (1979) 6
Carlson v. Landon, 342 U.S. 524 (1952) 6
Cherek v. United States, 767 F.2d 335 (7th Cir. 1985) 32
Class Action Application for Habeas Corpus on Behalf of All Material Witnesses in the Western District of Texas, In re, 612 F. Supp. 940 (W.D. Tex. 1985) 33
United States v. Accetturo, 783 F.2d 382 (3d Cir. 1986) 5, 18, 19, 21, 24
United States v. Acevedo-Ramos, 755 F.2d 203 (1st Cir. 1985) 18, 20
United States v. Affleck, 765 F.2d 944 (10th Cir. 1985) 29–31
United States v. Alatishe, 768 F.2d 364 (D.C. Cir. 1985) 7, 11–13, 16, 17
United States v. Al-Azzawy, 768 F.2d 1141 (9th Cir. 1985) 12–14
United States v. Angiulo, 755 F.2d 969 (1st Cir. 1985) 4, 20, 23
United States v. Bayko, 774 F.2d 516 (1st Cir. 1985) 30, 31
United States v. Becerra-Cobo, 790 F.2d 427 (5th Cir. 1986) 12
United States v. Berrios-Berrios, 791 F.2d 246 (2d Cir.), *cert. dismissed,* 107 S. Ct. 562 (1986) 20, 21, 24
United States v. Bilanzich, 771 F.2d 292 (7th Cir. 1985) 29–31
United States v. Carbone, 793 F.2d 559 (3d Cir. 1986) 16, 17
United States v. Cardenas, 784 F.2d 937, *vacated as moot,* 792 F.2d 906 (9th Cir. 1986) 5, 18–20
United States v. Chimurenga, 760 F.2d 400 (2d Cir. 1985) 2, 6–8, 15, 16
United States v. Coleman, 777 F.2d 888 (3d Cir. 1985) 2
United States v. Colombo, 777 F.2d 96 (2d Cir. 1985) 5, 23, 24
United States v. Contreras, 776 F.2d 51 (2d Cir. 1985) 15
United States v. Cox, 635 F. Supp. 1047 (D. Kan. 1986) 15, 17
United States v. Crabtree, 754 F.2d 1200 (5th Cir.), *cert. denied,* 105 S. Ct. 3528 (1985) 29
United States v. Daniels, 772 F.2d 382 (7th Cir. 1985) 5, 16, 17
United States v. Delker, 757 F.2d 1390 (3d Cir. 1985) 2, 10, 18, 19, 25
United States v. Diaz, 777 F.2d 1236 (7th Cir. 1985) 16
United States v. Dominguez, 783 F.2d 702 (7th Cir. 1986) 9, 11, 15–17
United States v. Fortna, 769 F.2d 243 (5th Cir. 1985) ... 2, 5, 6, 9, 13, 16, 18, 25
United States v. Frisone, 795 F.2d 1 (2d Cir. 1986) 23
United States v. Giancola, 754 F.2d 898 (11th Cir. 1985) 29–31
United States v. Gonzales Claudio, 806 F.2d 334 (2d Cir. 1986) 6, 23
United States v. Gotti, 794 F.2d 773 (2d Cir. 1986) 3, 7
United States v. Greenberg, 772 F.2d 340 (7th Cir. 1985) 30
United States v. Handy, 761 F.2d 1279 (9th Cir. 1985) 29–31
United States v. Hazime, 762 F.2d 34 (6th Cir. 1985) 15
United States v. Himler, 797 F.2d 156 (3d Cir. 1986) 7
United States v. Hinote, 789 F.2d 1490 (11th Cir. 1986) 15
United States v. Holloway, 781 F.2d 124 (8th Cir. 1986) 2, 4, 10, 11
United States v. Hurtado, 779 F.2d 1467 (11th Cir. 1985) ... 2, 13–16, 19, 21, 25
United States v. Jessup, 757 F.2d 378 (1st Cir. 1985) 2, 15–17

United States v. Kelly, 790 F.2d 130 (D.C. Cir. 1986)..... 32
United States v. Lee, 783 F.2d 92 (7th Cir. 1986)..... 12
United States v. Leon, 766 F.2d 77 (2d Cir. 1985)..... 6, 19, 25
United States v. Malekzadeh, 789 F.2d 850 (11th Cir. 1986)..... 13
United States v. Martin-Trigona, 767 F.2d 35 (2d Cir. 1985)..... 20
United States v. Martir, 782 F.2d 1141 (2d Cir. 1986)..... 16, 18
United States v. Maull, 773 F.2d 1479 (8th Cir. 1985)..... 2, 9, 10, 25
United States v. McKethan, 602 F. Supp. 719 (D.D.C. 1985)..... 3
United States v. Medina, 775 F.2d 1398 (11th Cir. 1985)..... 9-11, 25
United States v. Melendez-Carrion, 790 F.2d 984 (2d Cir. 1986)... 6, 7, 11, 13, 14, 21, 23
United States v. Miller, 753 F.2d 19 (3d Cir. 1985)..... 29-31
United States v. Moit, 758 F.2d 1198 (7th Cir. 1985)..... 30
United States v. Motamedi, 767 F.2d 1403 (9th Cir. 1985)..... 5, 6
United States v. Orta, 760 F.2d 887 (8th Cir. 1985)..... 2, 6, 16
United States v. O'Shaughnessy, 764 F.2d 1035, *vacated on reh'g as moot*, 772 F.2d 112 (5th Cir. 1985)..... 9, 10
United States v. Payden, 759 F.2d 202 (2d Cir. 1985)..... 9, 10
United States v. Perry, 788 F.2d 100 (3d Cir.), *cert. denied*, 107 S. Ct. 218 (1986)..... 6, 7, 16-19
United States v. Pollard, 778 F.2d 1177 (6th Cir. 1985)..... 30, 31
United States v. Portes, 786 F.2d 758 (7th Cir. 1985)..... 6, 7, 16, 24
United States v. Powell, 761 F.2d 1227 (8th Cir. 1985), *cert. denied*, 106 S. Ct. 1947 (1986)..... 29-31
United States v. Quinnones, 610 F. Supp. 74 (S.D.N.Y. 1985)..... 21
United States v. Randell, 761 F.2d 122 (2d Cir.), *cert. denied*, 106 S. Ct. 533 (1985)..... 29-31
United States v. Resek, 602 F. Supp. 1126 (S.D.N.Y. 1985)..... 4, 10
United States v. Rodriguez, 803 F.2d 1102 (11th Cir. 1986)..... 7
United States v. Rodriguez, 794 F.2d 24 (2d Cir. 1986)..... 35
United States v. Romano, 799 F.2d 17 (2d Cir. 1986)..... 7
United States v. Rose, 791 F.2d 1477 (11th Cir. 1986)..... 1
United States v. Salerno, 794 F.2d 64 (2d Cir.), *cert. granted*, 107 S. Ct. 397 (1986) (No. 86-87)..... vi, 7, 20
United States v. Shoffner, 791 F.2d 586 (7th Cir. 1986)..... 30
United States v. Smith, 793 F.2d 85 (3d Cir. 1986), *cert. denied*, 107 S. Ct. 877 (1987)..... 29-31
United States v. Spilotro, 786 F.2d 808 (8th Cir. 1986)..... 1
United States v. Strong, 775 F.2d 504 (3d Cir. 1985)..... 27
United States v. Suppa, 799 F.2d 115 (3d Cir. 1986)..... 15, 18
United States v. Szott, 768 F.2d 159 (7th Cir. 1985)..... 2
United States v. Theron, 782 F.2d 1510 (10th Cir. 1986)..... 24
United States v. Thompson, 787 F.2d 1084 (7th Cir. 1986)..... 27, 30
United States v. Traitz, 807 F.2d 322 (3d Cir. 1986)..... 1
United States v. Valera-Elizondo, 761 F.2d 1020 (5th Cir. 1985)..... 29-31
United States v. Vargas, 804 F.2d 157 (1st Cir. 1986)..... 12, 15
United States v. Volksen, 766 F.2d 190 (5th Cir. 1985)..... 7
United States v. Vortis, 785 F.2d 327 (D.C. Cir.), *cert. denied*, 107 S. Ct. 148 (1986)..... 6, 21
United States v. Westbrook, 780 F.2d 1185 (5th Cir. 1986)..... 2, 21
United States v. Wheeler, 795 F.2d 839 (9th Cir. 1986)..... 32
United States v. Williams, 753 F.2d 329 (4th Cir. 1985)..... 2, 6

United States v. Winsor, 785 F.2d 755 (9th Cir. 1986)..... 5, 19
United States v. Wong-Alvarez, 779 F.2d 583 (11th Cir. 1985)..... 2
United States v. Zannino, 798 F.2d 544 (1st Cir. 1986)..... 7, 24

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** provides educational programs and services for all third branch personnel. These include orientation seminars, regional workshops, on-site training for support personnel, and tuition support.

The **Division of Special Educational Services** is responsible for the production of educational audio and video media, educational publications, and special seminars and workshops, including programs on sentencing.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and tests new technologies, especially computer systems, that are useful for case management and court administration. The division also contributes to the training required for the successful implementation of technology in the courts.

The **Division of Inter-Judicial Affairs and Information Services** prepares a monthly bulletin for personnel of the federal judicial system, coordinates revision and production of the *Bench Book for United States District Court Judges*, and maintains liaison with state and foreign judges and related judicial administration organizations. The Center's library, which specializes in judicial administration materials, is located within this division.

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
GENERAL COUNSEL

June 15, 1989

Honorable Edward R. Becker
United States Court of Appeals
19613 United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106

Re: The Bail Reform Act of 1984: Legal Issues for Congressional Consideration

Dear Judge Becker:

In preparation for your testimony Friday, I have reviewed recent case law interpreting the provisions of the Bail Reform Act of 1984, using the Federal Judicial Center publication of Golash, The Bail Reform Act of 1984 (1987) (hereinafter referred to as Golash), as a starting point. It was surprising to realize that there has been very little development of the issues identified by Golash since the publication of her report. A few additional holdings support one side or another on particular issues, but few new analyses have emerged. A number of issues, however, continue to stand out as unresolved in any consistent way by the various courts of appeals.

The most consistently problematic issues are those regarding the timing of the detention hearing under the provisions of 18 U.S.C. § 3142(f). That section, of course, provides that a detention hearing must be held "immediately upon the person's first appearance before the judicial officer." Either party may seek a continuance and, except for good cause, a continuance sought by the Government may not exceed three days, while a continuance sought by the defendant may not exceed five days.

Sua Sponte Continuances of Detention Hearings

The statute does not provide for a continuance on the court's own motion. Golash noted that two courts had held that the judicial officer may not continue a detention hearing on the officer's own motion: United States v. Al-Azzawy, 768 F.2d 1141, 1146 (9th Cir. 1985), and United States v. Hurtado, 779 F.2d 1467, 1475-76 (11th Cir. 1985). The Tenth Circuit has joined in this view. See United States v. Montalvo-Murillo, __ F.2d __, No. 89-2056 (10th Cir. May 31, 1989). Even the District of Columbia Circuit,

cited as supporting the authority of the court to delay the detention hearing, cautions against such delay except in the most compelling situations. United States v. Alatishe, 768 F.2d 364, 369 (D.C. Cir. 1985): "To permit the judicial officer to postpone a detention hearing, while the defendant remains detained, places an unfair burden on the parties to object to such a continuance and undermines the immediacy requirement."

Despite these authorities, I am advised that it is not uncommon for magistrates to order continuances sua sponte. It is certainly arguable that such authority should exist under certain circumstances, and the cases that have rejected such authority have generally done so as a matter of strict statutory construction.

Computation of Continuance Period

The circuits are split on whether the provisions of Fed. R. Crim. P. 45(a), which exclude weekends and holidays from computation of time limits, apply in the case of a continuance under section 3142(f). The issue is complicated by the fact that the 10-day temporary detention period of section 3142(d) is specifically excluded from the operation of Rule 45(a). The Second Circuit has held that Rule 45(a) is applicable. United States v. Melendez-Carrion, 790 F.2d 984, 991 (2d. Cir. 1986). The Eleventh Circuit has rejected application of the second part of Rule 45(a), which excludes holidays and weekends from time computations (United States v. Hurtado, 779 F.2d 1467, 1474 (11th Cir. 1988)) but, in United States v. Madruga, 810 F.2d 1010, 1015 (11th Cir. 1987), held that the first part of Rule 45(a), which concerns the computation of time periods when the last date on which an act is to be performed falls on weekend or holiday, does apply to continuances under section 3142(f). Obviously, there is great confusion in this area and Congress could act to resolve the issue.

Relationship Between Section 3142(d) Temporary Detentions, and Section 3142(f) Continuances

Golash (p. 11) notes that most courts have interpreted the 10-day detention provision of section 3142(d) for defendants who are on conditional release as not conflicting with the strict time requirements for detention hearings set out in section 3142(f). The Government simply must move for a detention hearing within the 10-day temporary detention period in order to preserve its right to ask for detention. See United States v. Vargas, 804 F.2d 157, 161 (1st Cir. 1986); United States v. Becerra-Cobo, 790 F.2d 427, 430-31 (5th Cir. 1986); United States v. Lee, 783 F.2d 92, 94 (2d Cir. 1986); and United States v. Alatishe, 768 F.2d 364, 368 (D.C. Cir. 1985). Recently, the Eleventh Circuit has joined these circuits in United States v. Moncada-Pelaez, 810 F.2d 1008 (11th Cir. 1987).

As the court in Moncada-Pelaez noted, however, there is disagreement among the circuits as to precisely when the detention hearing must be held when the defendant has been temporarily detained pursuant to section 3142(d). In Becerra-Cobo and Alatishe cited above, the Fifth and D.C. Circuits, respectively, indicated that the detention hearing should be held within the 10-day temporary detention period. The Seventh Circuit in Lee held that the Government's three-day continuance begins to run after the expiration of the 10-day temporary detention period. The First Circuit appeared to assume that the hearing should take place within the 10-day period, and the Eleventh

Circuit in Moncada-Pelaez noted that it did not have to reach the question under the circumstances of that case. Obviously, Congress could remedy this confusion.

Remedies for Failure to Comply with First Appearance Requirement

The state of the law is also confused with respect to the remedies for the failure to comply with the time provisions of section 3142(f). In United States v. Al-Azzawy, 768 F.2d 1141 (9th Cir. 1985), and United States v. Montalvo-Murillo, __ F.2d __, No. 89-2056 (10th Cir. May 31, 1989), the remedy for a material violation of the time constraints was to preclude detention. See also United States v. O'Shaughnessy, 764 F.2d 1035, 1038-39 (5th Cir. 1985). In United States v. Payden, 759 F.2d 202, 205 (2d Cir. 1985), the court indicated that the remedy for failure to provide a hearing at first appearance was reconsideration of bail. In United States v. Clark, 865 F.2d 1433, 1436 (4th Cir. 1989) (en banc), the court held that automatic release was not the appropriate remedy for failure to comply with the time requirement; defendants were deemed to have waived their hearing until later requested, after which time they received a hearing within five days. In United States v. Coonan, 826 F.2d 1180, 1185 (2d Cir. 1987), and United States v. King, 818 F.2d 112, 114-115 (1st Cir. 1987), release was not required for failure to make a timely request for a detention hearing, but the defendants were already in state custody so were not materially prejudiced. In United States v. Vargas, 804 F.2d 157, 162 (1st. Cir. 1986), and United States v. Hurtado, 779 F.2d 1467, 1481-82 (11th Cir. 1985), the remedy for an untimely detention hearing was a de novo hearing by the district court.

The opinions in most of these cases indicate that courts take a "common sense" approach to remedies for violation of these procedural requirements. Although this approach has appeal, Congress, and the Supreme Court in United States v. Salerno, __ U.S. __, 107 S. Ct. 2095 (1987), thought these requirements important, and Congress may wish to see them more strictly enforced.

Presumption - Probable Cause Requirement

Many issues regarding the rebuttable presumptions of section 3142(e) have been resolved by case law. A couple of issues, however, remain. It seems fairly clear that a grand jury indictment is sufficient to satisfy the requirement that there be probable cause to believe that the defendant has committed certain drug or firearms offenses in order to trigger the second presumption of section 3142(e). See, e.g. United States v. Suppa, 799 F.2d 115, 118-19 (3d Cir. 1986), and Golash (p. 15). It is not clear, however, that an indictment for one of the specified offenses is necessary or whether the judicial officer may make an independent determination that there is "probable cause to believe that the person committed" one of the specified offenses. The Second Circuit held that such a charge was necessary in United States v. Chimurenga, 760 F.2d 400, 404-405 (2d Cir. 1985). Recently, in a well-reasoned opinion, Judge Aubrey Robinson of the District of Columbia District Court found otherwise in United States v. Bess, 678 F. Supp. 929 (D.D.C. 1988). The court in Chimurenga was concerned that unless the defendant is charged with one of the specified offenses, the defendant will be caught unprepared and unable to adequately rebut the presumption. Judge Robinson indicated that the Government's motion for detention would give adequate notice to defendant.

Although this is not a split in circuits, the conflict raises the possibility of such a split. The ambiguity could easily be resolved by Congress.

Another issue involving the probable cause requirement was raised by the Third Circuit in United States v. Suppa, 799 F.2d 115 (3d Cir. 1986). The court indicated that it had "grave question whether the required finding of probable cause may be based on a proffer of evidence by the government." However, I have found no other cases that echo that concern. The most recent case dealing with the type of evidence required, in general, under the Bail Reform Act indicates that it is proper for either the defendant or the government to proceed by proffer. See United States v. Gaviria, 828 F. 2d 667 (11th Cir. 1987). This case does not identify the question noted by Suppa. There does not seem to be enough concern to raise the issue before Congress.

Grounds for Finding Dangerousness

You have asked whether your testimony should include a reference to United States v. Himler, 797 F.2d 156 (3d Cir. 1986), where the Third Circuit held that the Bail Reform Act does not authorize detention upon proof of danger to the community other than from those offenses which will support a motion for detention under 3142(f). Himler was recently followed by the First Circuit in United States v. Ploof, 851 F.2d 7 (1st Cir. 1988). Based on the reasoning of these cases, which relies not only on the language of the statute but on the legislative history, it does not appear that there is a significant problem here.

Length of Detention

A question left open by United States v. Salerno, __ U.S. __, 107 S. Ct. 2095,2101-2102 (1987), is the issue of how long pretrial detention may continue without becoming punitive rather than regulatory. The Supreme Court noted that the length of pretrial detention was limited by the Speedy Trial Act. Although the Speedy Trial Act limits the pretrial detention period to 90 days, that period is subject to the various excludable time periods of 18 U.S.C. § 3161(h). 18 U.S.C. § 3164(b). The case law appears to indicate that the issue of the length of detention will be decided on a case-by-case basis. See, e.g., United States v. Gonzales-Claudio, 806 F.2d 334 (2d Cir. 1986). Recent cases discussing the necessity of dealing with this issue on a case-by-case basis are United States v. Hare, 873 F.2d 796 (5th Cir. 1989); United States v. Ojeda-Rios, 846 F.2d 167 (2d Cir. 1988); and United States v. Gelfuso, 838 F.2d 358 (9th Cir. 1987).

It is somewhat doubtful that Congress would step in to clarify this situation by establishing a stricter time period. As was pointed out in Judge Newman's decision in United States v. Melendez-Carrion, 790 F.2d 984, 996 (2d Cir. 1986), Congress seems to have specifically declined to set such a limit. The absolute 60-day time limit of the District of Columbia bail law, upon which the Bail Reform Act was based, was not carried over into the Bail Reform Act. The Senate Report indicated that the length of detention would be governed instead by the 90-day limit of the Speedy Trial Act, subject to the periods of excludable delay. S. Rep. No. 225, 98th Cong., 2d Sess. 22, n. 63, reprinted in 1984 U.S. Code Cong. & Ad. News 3182, 3205. As Judge Newman noted, however, there were other statements in the legislative history that indicate that

Congress did not consider the excludable periods or it may be that "the Senate did not fully appreciate just how long pretrial detention might last under the exclusions of the Speedy Trial Act." 790 F.2d at 996. In any event, it is my understanding that Judge Newman is going to mention this problem.

Release Pending Appeal

Section 3143(b) provides that "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal" shall be detained unless the court finds "that the person is not likely to flee or pose a danger to the safety of any other person or the community if released" and "that the appeal is not for the purpose of delay" and "raises a substantial question of law or fact likely to result in reversal." The difficulty with this provision has been the interpretation of the "substantial question" requirement. There is a fairly clear split in the circuits on the issue. Most of the circuits have held that a "substantial question" is one that is "close" or one that could be decided the other way. United States v. Perholtz, 836 F.2d 554, 555 (D.C. Cir. 1988), decided after Golash, took this position. See also United States v. Bayko, 774 F.2d 516, 523 (1st Cir. 1985); United States v. Randell, 761 F.2d 122, 125 (2d Cir.), cert. denied, 474 U.S. 1008 (1985); United States v. Valera-Elizondo, 761 F.2d 1020, 1024 (5th Cir. 1985); United States v. Pollard, 778 F.2d 1177, 1182 (6th Cir. 1985); United States v. Shoffner, 791 F.2d 586 (7th Cir. 1986); United States v. Powell, 761 F.2d 1227, 1231-32 (8th Cir. 1985), cert. denied, 476 U.S. 1104 (1986); United States v. Affleck, 765 F.2d 944, 952 (10th Cir. 1985); United States v. Giancola, 754 F.2d 898, 901 (11th Cir. 1985), cert denied, 479 U.S. 1018 (1986).

The Third and the Ninth Circuits, however, have established a less stringent interpretation of the "substantial question" requirement. These indicate that the standard is one that is "fairly debatable." See United States v. Messerlian, 793 F.2d 94, 96 (3d Cir. 1986), and United States v. Handy, 761 F.2d 1279 (9th Cir. 1985). See also United States v. Smith, 793 F.2d 85 (3d Cir. 1986).

This is obviously an area that needs congressional attention.

Standard of Review

There is a significant split in the circuits regarding the standard of review applied to appeals of release or detention orders pursuant to the provisions of 18 U.S.C. §§ 3145 and 3731. The Second and Fourth Circuits apply the "clearly erroneous" standard. See United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985), and United States v. Williams, 753 F.2d 329, 333 (4th Cir. 1985).

The First, Third, Sixth, Eighth, Ninth, and Eleventh Circuits and, recently, the Tenth Circuit have adopted a standard that requires an independent review of the lower court record to determine if the detention decision was correct. This standard is based on reference to Federal Rule of Appellate Procedure 9(b), which provides that, after the trial court reaches a determination as to release, it must set forth "in writing the reasons for the action taken" and the appeal should be effected with the aid of "such papers, affidavits, and portions of the records as the party shall present." The extent of the inquiry envisioned in Rule 9(b) suggests an independent review by the court of appeals.

United States v. Bayko, 774 F.2d 516, 518-520 (1st Cir. 1985); United States v. Delker 757 F.2d 1390, 1399-1400 (3d Cir. 1985); United States v. Hazime, 762 F.2d 34, 36-37 (6th Cir. 1985); United States v. Maull, 773 F.2d 1479, 1487 (8th Cir. 1985); United States v. Montamedi, 767 F.2d 1403, 1406 (9th Cir. 1985); United States v. Montalvo-Murillo, __ F.2d __, No. 89-2056 (10th Cir. May 31, 1989); and United States v. Hurtado, 779 F.2d 1467, 1470-1473 (11th Cir. 1985).

The Fifth Circuit, in United States v. Fortna, 769 F.2d 243, 250 (5th Cir. 1985), adopts what seems to be a third standard. A lower court decision will be upheld if it is "supported by the proceedings below," which seems closely related to the clearly erroneous standard. Fortna, and an early First Circuit decision, United States v. Jessup, 757 F.2d 378, 387-88 (1st Cir. 1985), relied on language from the 1966 Bail Reform Act, which stipulated that pretrial detention decisions were to be affirmed on appeal if "supported by the proceedings below." 18 U.S.C. § 3147 (repealed by the Bail Reform Act of 1984).

Again, the split in the circuits suggests that Congress may wish to consider clarifying the standard of appellate review.

Sincerely,

David N. Adair, Jr.
Assistant General Counsel

Senator SIMON. Judge Newman.

STATEMENT OF HON. JON O. NEWMAN

Judge NEWMAN. Thank you, Mr. Chairman. I appreciate the subcommittee's invitation to appear here this morning. Briefly, by way of background, I have been a member of the Federal judiciary for 17½ years, 7½ years as a district judge in the District of Connecticut and the last 10 years as a judge of the Court of Appeals for the Second Circuit. Before that, I served 5 years as U.S. attorney in Connecticut.

Senator SPECTER. And before that?

Judge NEWMAN. Pardon me?

Senator SPECTER. Before that, you were administrative assistant to Senator Ribicoff.

Judge NEWMAN. Correct.

Senator SIMON. That is an illustrious background.

Judge NEWMAN. Well, perhaps service on the Hill should have been the primary credential. [Laughter.]

I would like to confine my remarks in the limited time to two specific aspects of the statute as they concern preventive detention, which I think are defects in the statute as it works. I am not raising the policy issue of preventive detention, as such, but simply two aspects of the procedures that concern the way it works in practice, and they are both legislative matters.

The first concerns the standard of proof concerning the offense of which the defendant is accused. Under the statute at present, the preventive detention provision itself contains no standard regarding the level of proof necessary to show the likelihood that the person has committed the crime.

The statute inevitably incorporates the standard of probable cause. That is almost a coincidence because the person would have to have surmounted the standard of probable cause in order to be arrested validly or indicted.

But once past the standard of probable cause, there is nothing in the preventive detention statute that directs the judicial officer to ascertain whether proof of likelihood of guilt of this offense is anything higher than the low standard of probable cause.

Now, probable cause has been a standard developed over the centuries and it is a perfectly acceptable standard for what it was designed for; namely, whether to arrest. When a police officer sees suspicious conduct on the street, he does not have the leisure to make a studied analysis of all the maybes and why-fors of the situation; he must act.

So, the law says if he has probable cause, a reasonable basis for believing that a crime is being or has been committed, he may arrest. That standard is used to say to that person there is sufficient likelihood of your having committed a crime that you must stand trial.

In this statute, the Congress has said we are going to say that while you are waiting to stand trial, you shall be locked up in jail without any possibility of bail. I suggest to you, Senators, that there ought to be more proof before you can lock a man up than

the proof required simply to say you are a person who ought to be tried before a jury of your peers.

The whole history of bail says that standard should be rather high. My prepared statements reminds us of the early standards in the Pennsylvania constitution preceding its constitution, and in the constitution of most of the States where they set a rather high standard, even in capital cases, as to the likelihood that the person committed the crime of which he is charged.

Probable cause is far too low a standard. It is especially too low in the typical cases preceded by indictment, and most preventive detention cases are initiated by indictment.

The reason it is too low and unsatisfactory in that context is this. This statute says the judicial officer shall make certain determinations, but the courts have said, not surprisingly, that on the issue of probable cause the indictment itself automatically establishes the existence of probable cause. Again, that makes sense if the issue is should he be brought to trial. But I suggest it is quite unfair when the issue is should he be in jail pending trial.

In a multidefendant case, as anyone who has prosecuted knows, it is not difficult to obtain an indictment against particularly the lesser figures in the conspiracy. The grand jury focuses on the major figures and the lesser figures are indicted on little more than the fact that their names appear somewhere in the testimony.

No judicial officer makes a determination whether that particular person, who may be the 8th, 9th, or 10th person in the scheme—whether there is really any evidence of his guilt of the crime.

And it is not surprising, then, that when the case proceeds to trial, the most likely person to be acquitted is the 8th, 9th, or 10th person in the scheme, who was really sort of thrown into the indictment.

So, the first thing I would call your attention to is the need for this statute to have a precise standard as to what quantum of evidence is necessary, evidence concerning this crime, the crime of which he is charged, before he may be detained.

I suggest that standard ought to be clear and convincing proof, which is the intermediate standard between probable cause and proof beyond a reasonable doubt. And I suggest that the determination of whether the standard is met should be made by the judicial officer, who has a chance to make an independent judgment on the matter and not rely on the rather routine return of an indictment.

The second matter concerns the length of pretrial detention. When this statute was passed, there was a debate, as Senator Specter reminds us, as to what would be the limit of pretrial detention for preventive detention.

The Senators who were in favor of pretrial detention and preventive detention assured the Congress that the 90-day limit of the Speedy Trial Act--and there is a specific provision that says pretrial detention shall last no more than 90 days—that that provision would be, in the words of one Senator, the upper limit. Some call it the worst case. Ninety days would be it.

Unfortunately, those predictions proved to be inaccurate. The reason was not hard to understand. Indeed, Senator Specter was quite aware of it at the time and pointed it out, but to little avail.

The reason is that the Speedy Trial Act has exceptions, and while those exceptions, again, make perfectly good sense when the issue is when shall the trial occur, they are quite unfair when the issue is how long shall the pretrial detention last.

But since those exceptions automatically apply to preventive detention, we have had situations not merely as was said today of a pretrial detention lasting a year. We have had cases of pretrial detention under this bill of 14 months, 16 months, and one case that came to our court of appeals, 32 months of preventive detention.

I suggest to you that when the Congress passes a bill under the assurance that 90 days is the worst case and the reality turns out to be 32 months, it is time to take a hard look at whether some more realistic time limit on preventive detention should be put into this statute.

The problem comes up rather acutely in the issue of multiple-defendant trials where the defendant who is in pretrial detention says, look, I am ready to go to trial, and the Government says you may be, but we have got other people in this case, your codefendants, and we are not going to give you a separate trial.

I think the Government has to choose. If it wants a joint trial, then it can't have preventive detention for an undue length of time. And if it wants preventive detention, then it is going to have to agree to some severances and bring that person to trial.

So on both those issues, proof of guilt of the crime for which he is charged and duration of detention, I suggest this statute is significantly deficient and ought to be corrected. I understand these are not popular issues. There is not a strong force out there in the country on behalf of those who are preventively detained.

But the fact is any citizen of this country may find himself indicted because his name is before the grand jury, and some of them are innocent and some will be acquitted, and some have been acquitted. But some have been acquitted after they have been in preventive detention for a considerable period of time.

So, I urge this group to look at these issues with a careful eye and give it their best judgment whether some modest alterations ought to be made so that this statute remains an effective vehicle, and effective tool of criminal justice enforcement, but nonetheless one that is not needlessly unfair to the innocent.

Thank you.

Senator SIMON. We thank you.

[The prepared statement of Judge Newman follows:]

Statement of U.S. Circuit Judge Jon O. Newman
Before the Subcommittee on the Constitution
of the U.S. Senate Committee on the Judiciary
Hearing on the Bail Reform Act of 1984
June 16, 1989

Mr. Chairman, I appreciate the Subcommittee's invitation to appear here this morning to discuss the Bail Reform Act of 1984, particularly those provisions that concern preventive detention.

Briefly, by way of background, I have been a federal judge for the past seventeen and one-half years, serving seven and a half years as a United States District Judge for the District of Connecticut and ten years as a United States Circuit Judge on the Court of Appeals for the Second Circuit. Previously, I served for five years as the United States Attorney for the District of Connecticut.

My purpose today is not to debate the merits of preventive detention, but rather to discuss two aspects of the operation of the statute that I believe require legislative attention, regardless of one's views about preventive detention itself. In all candor, however, I should disclose that when the issue of the constitutionality of the statute came before me for decision, I ruled that the statute was unconstitutional, United States v. Melendez-Carrion, 790 F.2d 984, 996-1004 (2d Cir. 1986), a position that was later adopted as the law of the Second Circuit, United States v. Salerno, 794 F.2d 64 (2d Cir. 1986), but ultimately rejected by the United States Supreme Court, United States v. Salerno, 481 U.S. 739 (1987). I should add, however, that while, like most judges, I have often upheld the constitutionality of a statute that I believed was unwise as a matter of policy, the preventive detention statute presented me with a provision that I thought was unconstitutional as a matter of law but one that I also thought had considerable merit as a matter of policy.

The two issues I wish to raise with you today concern (a) the requisite proof for an order of preventive detention and (b) the duration of such detention.

(a) Proof for an order of preventive detention. The fundamental defect in the preventive detention provisions of the Bail Reform Act is the low threshold of proof concerning the offense of which the defendant stands accused. Under the current statute, preventive detention may be ordered simply upon evidence meeting the low standard of "probable cause." That has traditionally been the standard for determining whether a person may be arrested and whether he may be required to stand trial. For those purposes, it is an entirely satisfactory standard. However, in my view, as a matter of policy, putting to one side all questions as to constitutionality, "probable cause" is far too low a standard on which to rest an order for preventive detention.

The probable cause standard was formulated and shaped to deal with the exigencies confronting police officers. When viewing conduct justifying a reasonable ground for belief that a person has committed a crime, a police officer ought to be able to make a prompt arrest without waiting to amass a quantity of evidence sufficient to meet some higher standard. Eventually there will be a trial at which the prosecution will be required to prove guilt by a much higher standard -- proof beyond a reasonable doubt. The question is what standard of proof should govern the decision made after arrest and before trial as to whether the accused should be held in preventive detention without bail. For this intermediate step in the criminal process, a step with dire consequences for the accused who still enjoys, as the Bail Reform Act emphasizes, a presumption of innocence, 18 U.S.C. § 3142(j), an intermediate standard of proof should be applied. I suggest that the standard should be clear and convincing proof of the defendant's guilt.

Interestingly, the statute purports to adopt the "clear and convincing" standard, but it fails to make this standard applicable to the assessment of the likelihood that the defendant committed the offense for which he is about to be preventively detained. The statute applies the "clear and convincing" standard to the facts underlying a conclusion that no conditions of release will

reasonably assure the safety of the community. 18 U.S.C. § 3142(f). However, the statute sets no standard at all for the assessment of the evidence of the defendant's guilt, relying instead on the probable cause standard that applies to the testing of the validity of the arrest. It is true that the statute requires the judicial officer to consider, among other things, "the weight of the evidence against" the defendant in deciding whether to order preventive detention, 18 U.S.C. § 3142(g)(2), but the statute sets no standards that this evidence must meet. As a result, it frequently happens that a person is ordered into preventive detention that may last for months on no greater showing of guilt than the scant evidence that is sufficient to support a police officer's instantaneous decision on the street to make an arrest.

The inadequacy of the probable cause standard is intensified by the prevailing federal doctrine that an indictment by a grand jury conclusively establishes probable cause and precludes the defendant from having a preliminary hearing at which he would normally have the opportunity to test the sufficiency of the prosecution's evidence to meet even this low standard. See Jaben v. United States, 381 U.S. 214 (1965); Sciortino v. Zampano, 385 F.2d 132 (2d Cir. 1967). It is one thing to permit an indictment to oblige the defendant to stand trial without any opportunity to test the evidence of probable cause, but it is entirely different and far more dangerous to permit an indictment to suffice for preventive detention. Unlike some who have belittled the protection of a grand jury, I do not share the view that a federal grand jury will indict anyone the prosecutor wishes to indict, or as pungently put by Chief Judge Wachtler of the New York Court of Appeals, "a grand jury would indict a ham sandwich if the prosecutor asked it to." Grand juries have refused to indict some defendants and have rejected some charges against defendants they have indicted. The high rate of federal indictments that are returned is more a testament to the discretion of federal prose-

cutors in selecting cases to present for indictment than it is evidence that the grand jury takes its responsibilities lightly. Nevertheless, I surely agree with virtually all those who have presented cases to grand juries that it is normally not difficult to obtain an indictment. Indeed, there undoubtedly have been cases where a grand jury was willing to return an indictment on evidence that would not have sufficed to persuade a judicial officer to find probable cause if a preliminary hearing had been held.

The hazard of relying on an indictment for purposes of preventive detention is especially serious in two categories of cases. The first category comprises cases involving groups of defendants. The grand jury normally hears considerable evidence against the major figures in a criminal transaction, but often hears very little about the lesser figures, and sometimes scarcely anything about the most peripheral figures. It is precisely these peripheral figures who are most likely to be acquitted at trial, and some of them have been acquitted, yet the inclusion of their names in the indictment is sufficient under the current statute to place them in preventive detention for months.

The second category of cases where reliance on an indictment is dangerous consists of those in which the statute creates a presumption of dangerousness or risk of flight from the fact that the pending offense is within a designated class of crimes, notably drug offenses. 18 U.S.C. § 3142(e). Though the statute specifies that this presumption arises "when the judicial officer finds that there is probable cause to believe that the person committed" one of the designated offenses, the courts have ruled that an indictment by a grand jury establishes the necessary probable cause to trigger the statutory presumption. See United States v. Trosper, 809 F.2d 1107 (5th Cir. 1987); United States v. Contreras, 776 F.2d 51 (2d Cir. 1985). Thus, without any independent assessment of the evidence against a defendant by a judicial officer, the fact that a person has been indicted automatically serves to establish enough evidence of his guilt to render him subject to preventive detention

and, for some offenses, creates a presumption that preventive detention is required. These are consequences that never were attached to an indictment before the preventive detention provisions were enacted, and it is highly unlikely that a grand jury, while deliberating whether to indict, has any idea that its indictment alone will have such serious effects.

The use of a probable cause standard to assess the evidence of guilt for purposes of preventive detention stands in sharp contrast to the entire history of bail. The common law tradition permitted a denial of bail in all capital cases (which formerly included most felonies), but required a substantial showing of the defendant's guilt before bail could be denied. As early as 1682 in this country, the Pennsylvania Frame of Government permitted denial of bail in capital cases only "where the proof is evident, or the presumption great." That formulation was included in the fundamental law of most of the states and remains there today. In the preventive detention statute of the District of Columbia, which served in some respects as a forerunner of the federal statute, detention was available only after a judicial officer found a "substantial probability" that the defendant had committed the offense charged. Against this background of history, Congress made a radical decision in providing for the first time in any American bail legislation that a defendant could be placed in preventive detention simply on a showing of probable cause.

No matter how carefully we construct and administer the procedures of federal criminal law, some injustices are bound to occur. Some innocent people have been convicted and imprisoned. Some innocent people have been indicted and obliged to endure the anguish and expense of a long criminal trial. Our statutes and rules include numerous precautions to minimize these risks. With preventive detention, we have now created the risk that innocent people will be indicted and forced to spend months in jail, perhaps even years, until ultimately acquitted at trial, a risk that has occurred for several defendants. Regrettably, the preventive

detention statute contains no safeguard to guard against that risk. I urge the Congress to remedy this defect by affording every person in this country the assurance that he or she will not be placed in preventive detention unless a judicial officer determines, at an adversary hearing, that the prosecution has presented clear and convincing evidence of guilt.

(b) The duration of preventive detention. The second major defect in the preventive detention statute is the absence of any effective time limit on the duration of preventive detention. During Senate debate on the proposal, this problem was recognized, but the decision was made to rely on the provisions of the Speedy Trial Act, 18 U.S.C. § 3161 et seq. That statute sets a time period of 90 days as the normal time limit for pretrial detention, but it also creates an enormous exception to this limit by providing that all of the periods of permissible delay specified in section 3161(h), which can last for many months, are excluded from the 90-day limit. 18 U.S.C. § 3164(b). When the Senate considered adopting a more precise time limit for preventive detention, it was assured that the 90-day detention limit of the Speedy Trial Act would suffice. Senator Thurmond said that "the 90 days is the worst case limit," 130 Cong. Rec. S941 (daily ed. Feb. 3, 1984), and Senator Laxalt called the 90-day limit the "upper bound," id. at S943.

Unfortunately, their assurances have turned out to be inaccurate. There are defendants who have been held in preventive detention for more than a year, one as long as 32 months, United States v. Melendez-Carrion (Ojeda Rios), 820 F.2d 56 (2d Cir. 1987); another for 16 months, United States v. Zannino, 798 F.2d 544 (1st Cir. 1986); and another for 14 months, United States v. Gonzales-Claudio, 806 F.2d 334 (2d Cir. 1986), to cite only a few examples. Detention of less than a year but considerably longer than the "worst case limit" of 90 days are common, e.g., United States v. Theron, 782 F.2d 1510 (10th Cir. 1986) (four months); United States v. LoFranco, 620 F. Supp. 1324 (N.D.N.Y. 1985) (six

months). Moreover, prolonged preventive detention prior to trial may be extended for a considerable period of time when, as frequently occurs, the trial lasts for many months, sometimes a year or more.

Some courts have ruled that an extended period of preventive detention, considered along with other circumstances, violates the due process limitations of the Constitutions. See United States v. Melendez-Carrion (Ojeda Rios), supra; United States v. Gonzales-Claudio, supra. But, in some circumstances, detention for sixteen months has been held not to exceed due process limits, see United States v. Zannino, supra.

I do not believe it is sound legislative policy for Congress to leave the duration of preventive detention limited only by the expandable provisions of the Speedy Trial Act and the uncertain outer limits of the Due Process Clause. The preventive detention statute itself should have a fixed limit on the duration of this extraordinary form of incarceration. The 90-day limit of which the Senate was assured in 1984 would be appropriate. In no event should preventive detention last more than six months.

Frequently, preventive detention lasting for many months and even longer than one year occurs because of the prosecution's opposition to according the incarcerated defendant a separate trial. Courts are reluctant to require the prosecution to sever defendants for separate trials. Congress should specify that any defendant held in preventive detention for an extended period of time shall have an automatic right to a separate trial if the trial of his co-defendants is not ready to begin. After some period of preventive detention, the prosecution should be required to choose between a further period of detention and a joint trial.

Conclusion

Preventive detention is both an important safeguard for the interests of the community and a dangerous encroachment on the liberty of individuals. The Supreme Court has ruled that the basic provisions of the preventive detention statute are facially

constitutional, although some applications of the statute have not yet been constitutionally tested. But the Constitution, however it may ultimately be interpreted as applied to preventive detention, only marks the outer limit of permissible social policy. What the content of such policy should be is a matter for determination by Congress. This statute raises strong emotions on all sides. It will require legislative courage to face up to the defects in the statute and enact necessary amendments. I urge the Congress to take up that task.

Senator SIMON. Let us just use the 10-minute rule, but with adequate time for further questions.

Judge Newman, in the case of the first problem, standard of proof, you offered a very specific recommendation that, just off the top of my head, makes sense to me.

Judge NEWMAN. Yes.

Senator SIMON. In the case of the second, detention that is too long, you do not offer a specific——

Judge NEWMAN. Well, I do in my statement, Senator.

Senator SIMON. OK.

Judge NEWMAN. I was running out of time and I wanted to abide by your limits.

Senator SIMON. All right.

Judge NEWMAN. I didn't think it would be right to speak too long when I am talking about time limits. My statement suggests that you consider the 90 days that the proponents of this bill assured the Congress was the upper limit back in 1984. And if, on reflection, that time is deemed too short, I would think that 6 months should be absolutely the outer limit.

Senator SIMON. And some procedure even to go beyond the 90 days, it would seem to me, so that people aren't just, through carelessness and failure to bring a case to trial, detained indefinitely.

Judge NEWMAN. Well, if you had a 90-day provision, then I don't think there is much risk they would be detained indefinitely because once the 90 days was up, you can be sure defense counsel would be in on the 91st day with a motion to the court saying we haven't had a trial, he has been in 90 days, he has to be put on conditions of bond.

Now, those conditions may be quite restrictive. That doesn't mean he just gets a free ride. It might be monetary bond. It might be home detention, with electronic surveillance. It might be evening residence in a halfway house. There are lots of ways to circumscribe the freedom of a person without putting him in the local jail 24 hours a day or, as Judge Becker points out, in another jail several 100 miles away from the seat of court, his lawyer, and his family. But I think it could be a self-enforcing mechanism because counsel would be there enforcing it.

Senator SIMON. Do you find any kind—and maybe I will address this to either of you—do you find any kind of pattern of detention on the basis of race, either black or Puerto Rican?

Judge BECKER. We haven't looked at that, and we would be glad to. I am unaware of any pattern like that. I assume it follows the profile of defendants in a particular category. The biggest category are drug cases. Whatever the ethnic profile is in drug cases, I am inclined to think that that is the profile that you will find in detention.

Senator SIMON. Your suggestion, Judge Newman, obviously would, in a very slight way, reduce the prison overcrowding problem. Judge Becker, if we were to change the statute so that the 3 days really is 3 days, that would also, in a much more significant way, reduce the numbers.

Judge BECKER. I think it would, or if some kind of showing were required to get the 3 days. I think that is right because the number of people who are held in for 3 days is extremely high.

Senator SIMON. I am a nonlawyer. What is deferential review?

Judge BECKER. Deferential review—it is easier to explain it in terms of de novo review. When I review something de novo as an appellate judge, it is just as—I am allowed to substitute my judgment for the judgment of the district court or the agency. I am allowed to look at the record and say how I would have decided it in the first instance.

When I give deferential review, I have to defer and I can only reverse the lower court or the agency unless that agency abused its discretion or unless its findings were clearly erroneous.

To use a phrase, within the ball park, if the district court's decision, or if we are dealing with an agency—within the ball park, where reasonable people could disagree—then you have to let it alone, whereas if you have de novo review, you have the same responsibility as that person has and you look at the same record and you are free to disagree.

Judge NEWMAN. Senator, there is another aspect of that 3-day rule that ought to be mentioned. The statute requires that the Government seek preventive detention, if it wishes to, at the first appearance before the judicial officer. There are some reasons for doing that, but there are some adverse consequences of that requirement, and they relate to the continuance rule.

I think what has been happening in some number of cases is, since the Government is obliged to request preventive detention, if at all, at the first opportunity, they are more likely to ask it rather than lose the opportunity. And so you find cases where they say let us ask it first and then we can always reconsider it later, and you don't whether the reconsideration comes.

I think it might be worth looking at that requirement that the detention be sought at the first appearance. It may be you will have a more informed judgment if you relax that requirement.

Judge BECKER. One thing I didn't mention, Senator Simon, but it is in the memo, was that there is also much confusion in the state of the law as to remedies for failure to comply with the first appearance requirement. That is rather technical. I don't want to take the time now, but it is in the memo and that is another area that could stand clarification.

Senator SIMON. Is your committee going to be giving us a series of specific recommendations?

Judge BECKER. Well, we are meeting next week and nothing is on the agenda for next week, but I will report to the committee and we will look into it and get back to you.

Senator SIMON. I think that would be helpful. In terms of—and maybe I should ask this of the U.S. marshals or someone else—in terms of the electronic monitoring in home detention, have there been problems on that or is that really effective?

Judge BECKER. We have a number of pilot districts. On the subject of cost, I have the figure here. The daily cost of electronic monitoring is about $4 a day as opposed to $45 or $50 a day for detention. It varies in different districts.

Generally speaking, the way it is done, Senator Simon, is it is contracted out. There is a company that has the screen and the monitor, and if the fellow leaves, then you immediately know that he has gone beyond the permitted area.

The short of it is that our experience has been quite good, that it is effective. And we have reason to believe that it is also considered punitive.

Senator SIMON. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

The testimony has really been extremely helpful. It is refreshing to hear distinctions between deferential and de novo review, and close questions and fairly debatable. It is also refreshing to get back to some of those fine points. Around here, we paint with much, much broader brushes. Sometimes we apply the brushes without any paint. It is a very different standard in the Congress than it is in the courts.

Regrettably, there is very little time to explore these matters. I have very tight commitments at noon and we have quite a number of witnesses, and I am going to explore these issues with both of you judges more privately than publicly, but there are a few questions and comments.

Judge Becker, you put your finger on perhaps the most important aspect of any subject raised, although not squarely on pretrial detention, and that is what will the courts be doing when you have to carry out the congressional requirements.

I would suggest that it would be very helpful if your committee could give this Judiciary Committee a recommendation on how many judges you are going to need. Maybe it is a broader subject than just your pretrial committee, but somebody in your judicial conference ought to be telling us that because we are prepared to go to work at it and to provide you the judges which you have to have.

Or, put differently, if you start now, your chances will be better of having them in 2 or 3 years than they will be if you start in 2 or 3 years. But we do understand the extra U.S. attorneys, and we are really working on prisons. That is the big stumbling block now. So we would like to know that.

Judge BECKER. I will report that to you. There is a committee that deals with that and I will communicate with them immediately.

Senator SPECTER. Well, you really ought to tell us that. The Chief Justice doesn't appear very often, but he really ought to come before the Judiciary Committee and he ought to lay that on the line and he ought to bang the table because you can't start too soon on that problem. I know how hard you men work, you men and women of the Federal judiciary.

The baseline question I have on preventive detention—and I would like both of your assessments—is the policy. Beyond the overview and the specific legal issues which are very important, do you have a sense that we are keeping in jail between arrest and trial defendants who really ought to be kept in jail?

I hear your point about some people being kept too long and the standards not being applied, but the first question is are we keeping some people in jail who ought to be kept there, and the second question, violating the rule of two questions at once, but they interrelate, are we keeping a lot of people in jail too long who ought not to be kept there.

Judge NEWMAN. It is hard to know for sure because these are things we don't count very well. I can't even tell you how many people have been kept in pretrial detention and ultimately acquitted. I haven't seen data on that. I know it has happened because I have read newspaper reports of it and I have reviewed cases in which it was reported that a codefendant had been in pretrial detention but was acquitted.

So, the first thing is we need to know exactly what is happening. My impressionistic assessment is that, by and large, those in pretrial detention are those who ought to be; that they are people who, to a very high percentage, are, in fact, convicted.

There may be a certain number of cases of people who, thought convicted, end up being sentenced to time served and would have gotten even less than the time of preventive detention had they not been preventively detained.

Senator SPECTER. Well, Judge Newman, aside from the question of being convicted, are they the kind of people who really pose an active risk in the interim between arrest and trial?

Judge NEWMAN. Well, I suppose the answer is really risk of what.

Senator SPECTER. Committing a violent crime.

Judge NEWMAN. If it is a risk of—if you mean, is this a person who, on the street, would shoot somebody, knife somebody, rape somebody, I think the answer in most cases is definitely no.

Senator SPECTER. Sell drugs?

Judge NEWMAN. That is right; that is what I was coming to. If you mean would the person sell drugs, the answer is very likely yes, because that is what most of them are in for.

Senator SPECTER. What do you think, Judge Becker?

Judge BECKER. First of all, a disclaimer. I don't speak for the committee now, but only individually. I am inclined to agree with Judge Newman's assessment. I think the large majority of people who are detained are people of the kind that the Congress was thinking about.

I do, however, think—and I get this—again, I talked to magistrates around the country and the magistrates are somewhat surprised as to the way the statute has evolved because originally they thought when the statute came in that it was going to be the kingpins, that it was going to be the leaders who were the ones who were detained. And now a lot of the little people, a lot of the minor figures, the sixth, seventh and eighth people in the conspiracy that Judge Newman mentioned, are being detained by reason of the statutory presumption.

It is a very difficult question. First of all, in terms of the profile, we have relatively few violent criminals as defendants in the Federal court, certainly as compared to the State court. We have a lot of drug sellers, and I don't know what the statistics are as to the likelihood of a drug seller selling drugs while he or she is under indictment and awaiting trial.

Certainly, there are a lot of cases where they do, and to the extent that the Congress has made the policy judgment that anybody who has been involved in a crime with enough dollar volume of drugs ought to be detained, that is not a judgment that I guess can seriously be quarreled with, except I would say that there are

certainly a number who would not and they are being unnecessarily detained.

The problem is identifying them, and I don't really think that you can.

Judge NEWMAN. Senator, could I comment on your first point about adding more judges to keep pace with the number of agents and the number of U.S. attorneys?

Senator SPECTER. Sure.

Judge NEWMAN. This is perhaps a somewhat heretical thought, but I have said it before and I believe it very deeply. I think it is a mistake to respond to these problems by increasing the size of the judiciary unduly.

I appreciate there will be some increases, but I think we are in serious danger in this country of letting the Federal judiciary increase way beyond the appropriate amount, and we will find ourselves in 10, 20, 30 years with a Federal judiciary that looks very different from what we expect it to be.

And while I realize you have to do something—you can't just decide you are going to arrest more and more drug offenders and then not have the judges and the courtrooms to try them, but there is an answer. It is not a happy answer, but I think it is a better answer than letting the Federal judiciary go from 800 to 1,000, 2,000, 3,000, and that is to recognize that the selling of drugs is just as much a State offense as a Federal offense. Indeed, most drug sales are not prosecuted in the State courts.

If you want to have more drug agents on the Federal payroll making cases, fine. They can bring their cases to State court. Indeed, Federal prosecutors could be authorized to go into State courts. You do not have to take the Federal judiciary and see it grow to extraordinary lengths in order to have drug arrests. Those cases are State cases. Indeed, most gambling and mail fraud cases are State crimes.

And the Congress ought to take a look, as it is doing through the newly created commission to study the jurisdiction of the Federal courts, to really make a judgment where do these cases belong. So, I simply make that caution rather than endorse what most judges think is wonderful, to see more Federal judges. I happen to think that is not wonderful.

Senator SPECTER. Judge Newman, we are making that assessment, and speaking for my myself—and I am having some influence with the Armed Career Criminal legislation in expanded prisons and mandatory sentences, along with others—we have made it in the reverse.

We have no confidence in the State court systems in much of America. In Philadelphia and in New York and in Los Angeles. I don't want to talk about Chicago at the moment, we don't have confidence in the State court systems.

We have individual judge calendars in the Federal courts and Speedy Trial, and we have a lot of corruption in the State court system, certainly, in Philadelphia and in other places. I feel very strongly that if we are going to deal with the drug problem and organized crime and very serious armed career criminals that we have to go to the Federal courts.

I understand the point you are making that the quality and the uniqueness of the Federal judiciary is sacrificed along the way, but we are really heading in the other direction. I haven't been very influential in this big picture as we have gone more to the Federal drug enforcement role. So we have to think about how you are going to be able to handle your workload.

Judge NEWMAN. Two quick points, Senator. My point is that unless this matter is looked at with more care than it has gotten, in 20 or 30 years from now the Federal judiciary will be indistinguishable from the State judiciaries, and the virtues of a carefully selected, high-visibility, rather high, if I may say so, quality throughout the Federal judiciary will have been sacrificed to the transient preferences for Federal prosecution and Federal civil litigation.

Far better, I suggest, if there are areas of the country or individual cases where confidence is deservedly low in the State system, don't put the crime exclusively in the Federal courts, but let the U.S. attorney apply to the Federal judge to say this is a case that belongs in the Federal court, but not every $10 buy of heroin on the streets of New York, or $10 vile of crack. They don't all belong in the Federal courts. We don't need Federal Day, I suggest, as we now have in the Southern District of New York.

So, if there are cases or areas of the country where the State system is deficient, and there are, then authorize the use of the Federal courts, let the U.S. attorneys have discretion, let the Federal courts have discretion.

But to say all of these cases may routinely come in is going to, I suggest, leave you with a situation down the road where, in the effort to solve this problem, you will have lost the very distinctive nature of the Federal judiciary to which you now turn.

Senator SPECTER. Well, my time is just about up and I will conclude with just comment, and I shall pursue, as I said earlier, privately. If the quality of the Federal bench and the State benches were to be indistinguishable, that might be desirable if we could bring the State level to the Federal level. That is really what we ought to be doing.

We are trying to be selective. The Armed Career Criminal legislation is designed to go after the worst of the people, and on a selective basis. It brings up the issue as to how we get the U.S. attorneys to apply the selectivity. In the testimony which has been offered here today, we don't have enough of that, and the U.S. attorneys are by and large very good.

I don't think that they are necessarily better than district attorneys because that branch has really continued to draw quality, whereas the State judicial branches have not. But these are very weighty considerations and I think it is very useful to have them aired here today.

Thank you, Mr. Chairman.

Senator SIMON. I thank you.

If I could just follow up on your final comments, Judge Newman, my instinct is that you are right, but I also—we face some very severe problems in Illinois, particularly Chicago courts. I would be interested, as you reflect on this, if you could send Senator Specter and me a letter outlining very specifically what you think we can

do to strike a balance here, to give this kind of, I think, arbitrary decision to U.S. attorneys in this kind of a case.

Let me ask both of you, if we were to say—and this is not pretrial detention, but in terms of those who have been convicted in drug sales—if we were to say they have to stay in prison while they appeal, just off the top of your heads, if you were on this side of the table here would you vote for that or would you not?

Judge NEWMAN. Well, you have almost already said that. I think it is a very rare case where somebody convicted of a narcotics offense is able to persuade a district judge that there is in that case an issue of sufficient promise on appeal that he ought to get released on bail.

We see hardly any challenges to denial of bail pending appeal. The few we see are almost always rejected out of hand and they tend not to be major narcotics cases. They tend to be rather lesser crimes where the person is a solid community figure and there is really no risk of flight or dangerousness.

I don't recall seeing a single case of someone who I could honestly say was in the crime activity who then got released on bail pending appeal. So I think you are almost at that case now.

I don't think you need to take the further step and say never. I think if you look at the data, you will find it is so rare that a person who has been convicted of a drug offense gets released on appeal. There may be an occasional case where there really is a very, very serious issue on appeal and that person can show that he is not a danger to flee. And in that rare case, I think you might as well leave the statute alone. But I don't think there are hardly any cases of drug offenders being released on appeal.

Senator SIMON. Judge Becker.

Judge BECKER. I think that what Judge Newman says is essentially correct. I don't think there is any constitutional inhibition on it, Senator Simon, but I agree with Judge Newman that you are practically there.

However, voicing the kind of sentiment that he did, I am a firm believer in giving Federal judges discretion. We have a fine Federal judiciary, and the trend in recent years has been to take away their discretion—the Mandatory Minimum Sentencing Reform Act, and so forth. And when you take away discretion, you have a more rigid system, and while you may take care of most cases, a certain number of injustices take place that wouldn't take place if you had a more fine-tuned system which relied upon the discretion of Federal judges.

I think we should give Federal judges discretion and I think we should trust them. I think they are a pretty good lot and I think they do a good job.

Senator SIMON. We thank you both for your testimony.

Senator SPECTER. Would you gentlemen mind exiting this way?

Senator SIMON. Is Mr. Valukas here?

Mr. VALUKAS. Yes, Senator.

Senator SIMON. I am sorry; I didn't see you.

Mr. VALUKAS. That is all right.

Senator SIMON. We are very pleased to have Tony Valukas, the U.S. Attorney for the Northern District of Illinois, here.

STATEMENT OF ANTON R. VALUKAS, U.S. ATTORNEY, NORTHERN DISTRICT OF ILLINOIS

Mr. VALUKAS. Mr. Chairman, it is an honor to be before you. I have with me Mr. Barry Elden, who is head of the drug task force and the chief of the criminal division, here to assist me, since a number of the matters which come before you today are matters which would come under his division. So he is here to assist.

Senator, may I say first before I start that I have prepared and submitted on behalf of the Department of Justice a substantial statement which I would ask be made part of the record rather than read it.

Senator SIMON. It will be made part of the record.

Mr. VALUKAS. And, second, let me say just personally and on behalf of the U.S. attorneys whom I represent that I would like to thank the chairman personally for his assistance last year in connection with the legislation which we sought to rectify the decision in the *McNally* case. It has been of great assistance to us.

As you know, we have had ongoing corruption probes with which your staff has been very concerned, and so have we, and that legislation, in particular, was of great assistance and we appreciate that.

Senator SIMON. And let me add the credit goes to the U.S. attorney from Chicago, IL, who brought it to our attention, and I appreciate it.

Mr. VALUKAS. Thank you.

Senator, let me, if I may, make a brief statement just summarizing the views of the Department of Justice, and I think I can help clarify some of the matters which were referred to by the prior witnesses. I do have statistics on a number of individuals who have been acquitted who were detained in matters such as that.

Basically, the Department is very satisfied with the reforms which have been undertaken as a result of the Bail Reform Act of 1984. The act has been held constitutional in key portions. The sub rosa use of high money bond for potentially dangerous defendants is now a thing of the past. The Department of Justice, in order to make certain that certain of these statutory provisions are applied fairly and properly, has monitored the act's activities very carefully.

Let me make four brief points. First, the act has prevented defendants from fleeing. One of the big changes in the criminal justice system over the past decade has been the substantial increase in the number of drug cases prosecuted.

Generally, the Federal Government focuses on the interstate and international aspects of drug trafficking. In some districts like Chicago, 30 percent or more of the drug defendants are citizens of another country. These defendants present severe flight risks, and very often the setting of a high cash bond does not prevent flight because the defendant is more than willing to forfeit that bond in order to flee.

To some drug defendants—and we have seen in Chicago and certainly elsewhere—a $\$½$ million bond consists of a few cash-filled duffel bags which can be easily presented as the person leaves.

For example, in a very recent case with us, we charged a Colombian national with a drug offense. The defendant was in Florida and the magistrate there set a bond of $100,000 rather than detaining him. Twenty-four hours later, the bond was posted and the person is gone and has never been seen since.

The act itself has provided a marked improvement over the less standardized system which was in place prior to the act. Under prior law, for defendants who posed a risk of flight, judges had to come up with some dollar amount they thought the defendant could not meet. In essence, it was a dishonest system. This system is more honest.

Though, we still have some defendants who are released and then flee, the numbers are low, and I would like to refer in part to our experience in Cook County. I called the State's attorney just before I left Chicago to get the statistics.

In contrast to what takes place in the Federal system, in Cook County, IL, the court system, there were 540 bond forfeiture warrants issued every month on drug offenders alone; that is, 540 individual drug defendants every month of the year who do not show up, people who have been put on bond and don't show up for trial or otherwise.

One of the frustrations of law enforcement today is that drug dealers and other criminals are arrested and then within hours are back on the street committing the same crimes that they had committed before. The preventive detention aspect of the act tends to eliminate that evil.

Detention for dangerousness is particularly applicable to defendants charged with narcotics and bank robbery offenses, and where we have found through experience that recidivism is generally quite high.

With the increase in the prosecution of drug defendants, the preventive detention provisions are particularly needed. Our experience with the act is that the detention for dangerousness provisions are utilized only when the Government introduces substantial evidence, clear and convincing evidence, that the defendant is truly dangerous.

The standard generally applied across the country, and certainly in Chicago, is that a defendant cannot be detained on the grounds of dangerousness. We cannot seek that without having the personal approval of the U.S. attorney. So it is bucked up the chain to the U.S. attorney himself or herself for purposes of review before application is made to a magistrate to detain on the basis of dangerousness. So, it is not done willy-nilly by the youngest assistants. It is a decision made at the top of the office.

One of the strengths of the Federal judiciary, of course, is its diversity. What this means, however, is that there exists a diversity of views in the Federal judiciary regarding whether drug offenses are dangerous in the same sense that violent crimes are.

We have found particularly useful, therefore, the act's rebuttable presumption that a drug offender, like a violent criminal, constitutes a danger to the community and a flight risk.

Our experience in the Northern District of Illinois is that without this congressional declaration, we would have not been able to

detain persons likely to commit drug offenses even after they were convicted.

For example, in one case after a guilty verdict for possession with intent to distribute several kilograms of cocaine, we were required to appeal a release order. The court of appeals detained the defendant and relied on this act's presumption and burden of proof provisions relating to the postconviction situation. But the trial judge himself had released the defendant in the first instance and would have put the person on bond had it not been for the provisions of the act.

Prior to the act, even when a defendant was sentenced to a lengthy jail term, after sentencing he could walk out of the courtroom with his attorney, the prosecuting attorney, and everyone else. And it is very hard, it seems to me, for the public to understand the circumstances of a person convicted of a serious crime not going to jail, but that is what routinely took place prior to the Bail Reform Act of 1984.

After a jury returned a verdict of guilty, the judges typically allowed defendants to remain on release, and even after sentencing the defendants would remain on release pending appeal. Quite often, they wouldn't begin serving their sentences for years after the appeal itself had begun.

In another drug case which took place in Chicago, a judge allowed a Peruvian national to remain on release after a conviction because the defendant had made his prior court appearances and had a family and had a reputation in the community. The defendant promptly fled and has not been seen since.

Under the Bail Reform Act, however, when a jury comes back with a verdict of guilty, particularly in drug cases, the defendant does not routinely leave the court house with the jurors who have just convicted him. Instead, he must show by clear and convincing evidence that he is not a risk of flight, not a danger to the community. And once a defendant is convicted, the presumption of innocence no longer applies. The burden is on the defendant to come forward.

Congress, therefore, was fully justified in requiring a defendant, after conviction, to shoulder the burden of proof that he is entitled to release. This is very different from what took place prior to the act.

Convictions are rarely overturned on appeal. Moreover, an indigent defendant, for instance, may obtain a free transcript, a free appellate attorney. And virtually all convicted defendants, regardless of the merits of their case, file appeals.

The act has eliminated release for all convicted defendants except those who are able to show that they have a substantial issue to raise on appeal. That provision of the act is reasonable, assures a swift punishment of persons convicted of a crime, and promotes respect for the criminal justice system. In our opinion, that portion of the act has worked well.

In conclusion, the Department of Justice is extremely pleased with the results of the Bail Reform Act of 1984 and the Supreme Court's decision upholding the constitutionality of pretrial detention based on dangerousness.

In a final note, I should note that the administration will propose further strengthening of this excellent law by adding new predicate offenses particularly relating to explosives and firearms.

Pretrial detention has become an important tool for Federal prosecutors, particularly in the war on drugs, and we will continue to use it judiciously. The pattern of using it in the past has been shown to be judicious.

Senator, I would add one other thing. The question was raised before as to whether or not there were any statistics concerning acquittals of individuals who had been detained. The Administrative Office of the United States gathered data for the time period of July 1 through December 31, 1987, and the data reflects that of the persons detained after a hearing, 35 individuals, or 1.5 percent, were acquitted—that was after trial; the other cases were disposed of otherwise—which is, in my opinion, a very small percentage and doesn't suggest that there has been any wholesale casting of the net and dragging individuals in who were not subject to bona fide prosecution.

And there is no indication, for instance, in those acquittals whether those acquittals related to some technical aspect or whether or not it was based on some other part of the proof itself.

Senator, I would take questions at this time.

Senator SIMON. I don't know if you were here when Judge Becker gave the statistics on the 3-day period, the 3-day detention, but in some areas the 3 days grow into 5 days if it is over a weekend. And the numbers, at least, were startling to me. I don't know whether Senator Specter shared that feeling or not.

Senator SPECTER. I did.

Senator SIMON. Yes; what is the practice in Cook County? If we were to say 3 days has to be 3 days, would that present any problem to you?

Mr. VALUKAS. No, it would not present a problem, and the practice in the northern district is 3 days means three days and includes the weekend. It is not 5 days. So I think we would have no problem with the 3-day provision meaning 3 days including the weekend. We have duty magistrates on the weekend. We have assistants who are down there on the weekend. It certainly seems to me an appropriate clarification.

Senator SIMON. I think Senator Specter was out of the room when you mentioned the Cook County figures on the numbers of people in State courts who are indicted and post bond. Could you go over those figures again?

Mr. VALUKAS. Yes; Senator Specter, before I left Chicago, I called the State's attorney because they have had an extraordinarily bad experience with regard to bond for individuals pending trial.

I asked him the statistics in Cook County and they are as follows: On a monthly basis, they have 540 individuals for whom bond forfeiture warrants are issued in drug cases alone, meaning individuals who have been arrested, who have been charged, and who have failed to appear, though they have been on bond—540 cases a month, compared to the statistics in the Federal system which are extraordinarily low.

In Chicago, one of the reasons that we are urged by community groups—that is, the Federal prosecutors asked by community

groups, such as the group from Austin—to have Federal days is because we, in fact, when we make the arrests, are able to detain individuals, so that the drug dealer is not on the street more quickly than the citizen who brought the charges in the first instance, and that has a significant impact in the community.

Senator SPECTER. When you say 540 have skipped bond, do you have a number as to how many have been charged?

Mr. VALUKAS. I am sorry. Excuse me?

Senator SPECTER. When you say 540 did not show up for the next hearing, how many did?

Mr. VALUKAS. I don't know. I don't have that number. I can gather that for you.

Senator SPECTER. Well, I would be interested to know because Cook County, like Philadelphia County, except you have got a bigger jurisdiction—you must have a tremendous number of people who are charged on drug offenses, and I would be interested to know what the other side of that coin is, how many do show up.

Mr. VALUKAS. I will gather that for you. I will respond in a letter.

Senator SPECTER. Thank you.

Senator SIMON. But in any event, the 540 still is a staggering number.

Mr. VALUKAS. I thought so, too. It translates into my map—it is not great, but you multiply that by 12 and it certainly is a large number of warrants being issued on a monthly basis for drug defendants alone.

Senator SPECTER. It is a staggering number, and if you took a look at the number of fugitives out of Cook County—out of Philadelphia County, we used to have 15,000 fugitives that we couldn't find. It is incomprehensible to rational people to hear what happens in the criminal justice system in this country, especially in big cities like Philadelphia and Chicago.

Mr. VALUKAS. Well, I think the problem becomes that much more acute because the statutes with which we are dealing, particularly on the Federal level, with the minimum mandatories, which I think are excellent in the drug cases, and with the new sentencing guidelines where people can reasonably expect that after a trial in which the conviction rates, for instance, in Chicago run 98 to 99 percent overall, that they are going to face substantial time.

They don't have the opportunity, for instance, of bargaining it down now or having the judiciary impose a lenient sentence. That is an extra incentive for people facing a substantial jail sentence to leave, to flee.

Senator SIMON. You heard Judge Newman talk about turning more cases over to State courts. Frankly, those statistics don't encourage moving in that direction. Do you have any reaction to the suggestion?

Mr. VALUKAS. With all deference to His Honor—and I certainly have nothing but respect for the Federal judiciary, and we have an extraordinary judiciary at the Federal level—the fact is that I am besieged by community groups asking us to take on more and more prosecutions because our prosecutions are more effective, because people, in fact, go to jail after they are prosecuted in the Federal

system, and because, in fact, they are kept in jail for longer periods of time.

The system in the State court is sufficiently and significantly overcrowded, putting aside the other problems which may involve some of these cases in which we have had problems, for instance, in corruption, that plea bargaining is common because the system is overburdened. Their ability to prosecute these cases effectively is often limited as a result of that. So, his suggestion that we turn away more cases, I don't think is a realistic suggestion.

The other thing is if you look at the type of cases that are actually being prosecuted, the vast and overwhelming majority of the cases prosecuted at the Federal level are not buy-and-bust gram cases. They are multikilo cases or they are cases involving large cartels or conspiracies. While there might not be a lot of drugs on the table, it is part of a large organization.

We don't generally deal with Federal days except, frankly, where we have communities which are asking us to go in on a one-shot basis and give them some hope, and that is why we go in and have a Federal day.

Senator SPECTER. Mr. Chairman, can I ask one more question because I am going to have to leave in a moment?

Senator SIMON. Yes.

Senator SPECTER. You heard Judge Newman's comments about amendments on two points, standard of proof of the commission of the offense and making modifications as to the length of detention. Do you agree or disagree with those two points?

Mr. VALUKAS. I disagree, and I will be brief in my response. Part of the response deals with the fact that, as I indicated before, the acquittal rate in these detention cases is extraordinarily low. You are talking across the Nation; you are talking 1.5 percent. So it seems to me that the cases in which detention is being sought are cases which are carefully considered before prosecution is brought forth.

Second, to establish a burden of clear and convincing is really going to require a minitrial of the Government's case at a detention hearing, which, you know, having had experience in that in terms of both discovery and other matters, is a very difficult and onerous task for the Government and I think can severely hamper our ability to prosecute certain cases. And so I would say, statistically and based on experience, there isn't a problem here, so that it doesn't need to be corrected.

Going to the other aspect, which is the length of detention, there is a limitation on how much time before a person goes to trial. It is 90 days, and under the Speedy Trial Act, unless the judge makes specific findings, it has to be held within that period of time.

Saying, let us say, a period of time of 6 months where the defendant is constantly requesting additional time for pretrial motions and things such as that—does he at the end of 6 months—is he then in a position to say, well, we have reached 6 months and I know I have gotten us all involved in these onerous pretrial motions and now I go free? If that is not the standard, then the Speedy Trial Act already applies in this situation.

One last matter, and I know you have to leave, Senator. Under the Speedy Trial Act, if you had a defendant who was detained and

another one who was not, the judge can permit reasonable delay for purposes of adjudicating motions; that is to say, even over the objection of the detained individual. But that is a limitation, also, so that the judge has the authority now to sever that individual and try that case separately, with or without the Government's concurrence. So there is in place a mechanism to prevent abuses.

Senator SPECTER. Thank you.

Senator SIMON. This electronic means of keeping people in a certain location outside of prison—obviously, as we review any of this, we are talking about the prison overcrowding problem. Have you experimented with that at all?

Mr. VALUKAS. Senator, we have not used electronic monitoring, to my knowledge, in the northern district. I don't think it is a realistic approach to pretrial detention where you are dealing with dangerousness.

The individual who is being detained is being detained because he is believed to be sufficiently dangerous. We have to establish that by clear and convincing evidence to a judicial officer that he is a danger to witnesses or to the community. Putting that person under electronic monitoring, it seems to me, is not necessarily going to take care of the problem.

The other aspect of the act provides flight. I mean, I sit here thinking about a Colombian national who is facing 20 years' imprisonment on a minimum mandatory and placing him in a room with electronic monitoring and saying if you leave this room, we are going to try and catch you, and thinking how likely it is that we are going to try and catch him and how likely it is that he is going to try and flee. I don't think it is going to work in these types of cases.

Now, the type of individuals where it might work are the people who, frankly, are not being detained. The white collar criminals who might be serving their sentences at home or persons who are on the back end of their jail sentences who might be serving the last 6 months at home—those individuals would be the individuals who are not likely to be detained, but, as part of the prison overcrowding problem, might be an alternative to prison. But I would not suggest it in terms of this act.

Senator SIMON. If, suddenly, the Attorney General were to say to you, you write whatever changes you would write in the present law in terms of pretrial detention, any changes at all you would suggest?

Mr. VALUKAS. Senator, I know this is going to sound impossible, but the answer is no. We think that the act is working well. We think that the statistical information which we have been able to gather does not point to any significant deficiencies. We think that it is being applied carefully.

I think that, you know, the Department was sensitive to the concerns of Congress and established guidelines in how we can administer it as U.S. attorneys. The administration is going to propose the addition of certain firearms acts as predicate acts for the rebuttable presumption, as well as explosives violations. I think those might be good additions based on our present experience and particularly in light of some of the violent crimes which we are seeing

on the street. Other than that, I think we have an Act which is good.

Senator SIMON. And what about the idea of holding people, once convicted, the question I asked the two judges? If you are on appeal, you stay in prison while you are on appeal in a drug trafficking case. In the case of crimes of violence, there does not seem to be as much of a problem as—generally, people are being held.

Mr. VALUKAS. I think that is a good idea. I think that, to some extent, most of the courts are now applying that standard, but I think that is a standard which is a good standard.

I think once the person has gone through trial and has been convicted of a serious drug offense that the society has a good reason to say at that point, you will stay in jail until the appeal is concluded.

Senator SIMON. And how would you define that serious drug offense?

Mr. VALUKAS. I think that the offense that we are talking about is—an offense which carries a sentence of 10 years or more would be the type of offense to which I am addressing myself.

Senator SIMON. OK. Unless you have further——

Senator SPECTER. No; thank you very much. We appreciate your help, Mr. Valukas, and we compliment you on an important job.

Mr. VALUKAS. Thank you very much.

Senator SIMON. Not only is he in a significant position, but he has been doing an outstanding job there, and I personally, as one citizen of Illinois, appreciate it.

Mr. VALUKAS. Thank you, Senator.

Senator SPECTER. Well, being a U.S. attorney is a tough job and having a district like you do is a tough job, and we appreciate your working at it. It is quite a career sacrifice that you are making. So your appearing here today, we appreciate, but we appreciate even more your being on the job 365 days a year.

Mr. VALUKAS. Thank you very much, and I will simply say, as far as I am concerned, it is the best job in the world. Thank you.

Senator SIMON. Thank you.

Mr. VALUKAS. I will provide that additional information to you by letter.

Senator SPECTER. You have never been a Senator, though, yet.

Mr. VALUKAS. No; thank you.

[Mr. Valukas submitted the following material for the record:]

STATEMENT

OF

ANTON R. VALUKAS
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF ILLINOIS

Mr. Chairman and members of the Committee, I welcome this opportunity to present the views of the Department of Justice on the implementation of the Bail Reform Act of 1984. The Department is very satisfied with the reforms that have taken place as a result of the statute. This Act, key portions of which the Supreme Court has upheld as constitutional */, has made the decision to detain pending trial and appeal an open and visible one, subject to judicial scrutiny. The sub rosa use of high money bond for potentially dangerous defendants is a thing of the past. To make certain that these statutory provisions are applied fairly and properly, the Department has monitored the Act's implementation.

Background

Congress passed the Bail Reform Act in October 1984 in response to a widely-held view that there was an urgent need to provide federal courts with the tools to make rational and appropriate decisions pertaining to the release of persons accused or convicted of crime. **/

---

*/ United States v. Salerno, 481 U.S. 739 (1987). The Court concluded: "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. We hold that the provisions for pretrial detention in the Bail Reform Act of 1984 fall within that carefully limited exception .... We are unwilling to say that this congressional determination, based as it is upon that primary concern of every government — a concern for the safety and indeed the lives of its citizens — on its face violates either the Due Process Clause of the Fifth Amendment or the Excessive Bail Clause of the Eighth Amendment" (481 U.S. 755).

**/ Statement of James I.K. Knapp, Deputy Assistant Attorney General, Criminal Division, before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, concerning Bail Reform, on May 24, 1984.

The new provisions were designed to assure a forthright means of detaining both dangerous offenders and offenders who are likely to flee before trial, pending sentence, or during appeal.* Specifically, the law:

1) allows judges and magistrates to consider danger to either the community or individuals in setting pretrial release conditions, other than financial conditions;

2) permits the imposition of additional types of release conditions, including probationary-type supervision, and permits the rejection of bail money if its source is illegal income;

3) allows pretrial detention if no condition or combination of conditions of release will assure the defendant's appearance or the safety of specific individuals or the community;

4) provides procedures for revoking the release of a defendant who has violated a condition of release;

5) bars release pending sentence or appeal unless the convicted defendant proves that such release would not pose flight or safety risks and that any appeal raises a substantial question of law or fact likely to result in reversal; and

6) raises penalties for bail jumping and provides enhanced penalties for federal crimes committed while on pretrial release.

In addition, under the act, judicial officers still may release a defendant on personal recognizance or upon the execution of a secured or unsecured appearance bond.

The Bail Reform Act sets forth certain presumptions that may lead to a defendant's detention prior to trial. First, in certain types of

---

*/ For the remainder of the testimony, the general term "pretrial detention" will refer to the categories of detention before trial, detention pending sentence, and detention during appeal.

cases (a crime of violence, a capital offense, a 10-year drug felony, or any felony if the defendant has the criminal record described in the statute at section 3142(f)(1)(D)), there is a rebuttable presumption that no conditions of release can reasonably assure the safety of another person or the community, if the judicial officer finds at the hearing that (1) the defendant was previously convicted of a federal or state crime in one of these same categories, (2) the offense that led to that earlier conviction took place while the defendant was on pretrial release for any federal, state, or local offense, and (3) no more than five years have elapsed since the defendant's previous conviction or release from prison for the conviction.

Second, there is a rebuttable presumption that no conditions of release can reasonably assure either the appearance of the defendant or the safety of the community when the judicial officer finds that there is probable cause that the defendant has committed either a 10-year drug offense or a federal firearms offense under 18 U.S.C. §924(c).

Prior to enactment of the Bail Reform Act, defendants considered dangerous by judicial officers often were detained prior to trial through imposition of a high money bond. The defendants so detained had no opportunity to challenge the judicial officers' suppositions. Now, defendants are entitled to a full hearing on the issue of dangerousness, during which they have a right to counsel and the opportunity to testify, to cross-examine witnesses, and to present other information. The government must prove dangerousness by a clear and convincing standard. Thus, while protecting the safety of the community, the Bail Reform Act allows defendants the opportunity to present arguments for their release.

The post-conviction detention provisions have proved very useful in detaining convicted offenders who, prior to the Bail Reform Act, could

have been out on the street for years pending sentencing and appeal. Without the law we would have continued to see convicted drug traffickers returned to the street immediately after their adjudication.

Litigation

The courts have resolved basic challenges to the Bail Reform Act. Most importantly, the Supreme Court upheld the constitutionality of the Bail Reform Act's provision for detention based on dangerousness in United States v. Salerno, supra. The Court held that protecting community safety by detaining persons presumed to be dangerous prior to trial is a "legitimate and compelling" regulatory goal (481 U.S. 749).*/ The Court stated that, in certain circumstances, the government has well-established authority to restrain an individual's liberty prior to or absent a criminal trial or conviction.

The Court also found that the Act contains sufficient procedural safeguards to protect the rights of the accused person. The Act requires a full hearing, with the defendant having the right to counsel and the opportunity to present evidence in his favor. The government must prove its case by clear and convincing evidence. The judicial officer determines the appropriateness of detention based on statutorily enumerated factors and must prepare written findings of fact and a statement of reasons for the decision to detain. Finally, Salerno affirmed the Act's provisions for immediate appellate review (481 U.S. 751-752). If detained prior to trial, the defendant also is entitled to the protections of the Speedy Trial Act.

---

*/ Before The Bail Reform Act of 1984, there was no federal precedent for detention based upon danger to the community. However, in 1970, Congress enacted a pretrial detention statute for the District of Columbia, upon which 18 U.S.C. §3142 is largely modeled. The constitutionality of the District of Columbia's statute, 23 D.C. Code 1322, was upheld in United States v. Edwards, 430 A. 2d 1321 (D.C. Ct. App. 1981) (en banc), cert. denied, 455 U.S. 1022 (1982).

The Act is working well, as evidenced by the small number of appeals now filed involving its interpretation. The majority of the current appeals are fact-based, tied to the circumstances of the individual defendant.

Implementation

The Bail Reform Act of 1984 has improved the criminal justice system. Judicial officers and attorneys believe that the system is now more forthright and honest */. Defendants may no longer have high money bonds imposed as a means of sub rosa detention for dangerousness. And, the courts now have the means to detain drug dealers who are likely to flee and who formerly expected to pay high money bonds simply as a cost of doing business.

In February 1988, the Bureau of Justice Statistics (BJS) concluded a survey of detained populations before and after the Act. This study found that, before the Act, 93% of pretrial detainees were held for failure to post bail. After the Act's implementation, approximately two-thirds of the persons detained prior to trial were held pursuant to a judicial decision according to the provisions of the Bail Reform Act, and only about one-third were held for failure to post bail. BJS also examined the outcomes for defendants on whom financial conditions of release were imposed. BJS concluded that, after the Act, almost two-thirds of defendants required to post bail were able to make bail and were released, compared to only 50% before the Act. These figures indicate that high bail is less likely to be used today to detain defendants.

---

*/ U.S. General Accounting Office, Criminal Bail: How Bail Reform Is Working in Selected District Courts, GAO/GGD-88-6, October 1987, p. 33. Hereafter referred to as "GAO Report."

The Department has directed that government attorneys use special care in employing the provisions of the Bail Reform Act, since this law involves the balancing of individual liberty against public safety and the integrity of the justice process. Government attorneys have carried out the provisions with the requisite care. GAO, in a recent report, found that the government requested pretrial detention for only 39% of all defendants who qualified for use of the rebuttable presumption (GAO Report, p. 33).

Statistics collected by the Administrative Office of United States Courts (AOUSC) confirm that this powerful tool has been used judiciously. In the 12 month period ending March 1989, the courts ordered detention in 74% of the hearings. These defendants (9,349) represent approximately 23% of all federal criminal defendants for whom reports were filed during this period under the Pretrial Services Act. Of these hearings, 91% were initiated by motion of the government and 9% upon sua sponte motions. Sixty-two percent of the detention hearings were held under the rebuttable presumption provisions of the statute. Most pretrial detentions ordered after hearings were based only on risk of flight (46%); those based upon both flight and dangerousness made up the next largest group (40%); and the smallest number of detentions were based upon dangerousness alone (14%).

For all three Illinois districts, AOUSC data show that federal judges ordered detention for 274 defendants during the 12 months ending March 1989. The most common basis was a concern about both flight and dangerousness (50%), followed by risk of flight alone (26%), and dangerousness alone (23%). Compared to the national average, Illinois judges appear to be somewhat more concerned about the threat posed to witnesses and the community by some defendants.

Nationwide, statistics collected by the U.S. General Accounting Office and the AOUSC indicate that crimes committed by persons released prior to trial have decreased since the Act was passed. We do not ascribe this decrease entirely to the Bail Reform Act, since many other changes have occurred simultaneously with bail reform; however, we do believe that this decrease is a positive sign. There is also an unquantifiable benefit to society from preventing crime perpetrated by society's most dangerous offenders, a population targeted under the Bail Reform Act.

Since April 1988, AOUSC has provided the Criminal Division with quarterly reports from AOUSC's data collection system. These reports have replaced the Division's system for collecting data from U.S. Attorney offices and provide a full picture of how pretrial detention is being implemented in federal courts. Based on data from Pretrial Services, AOUSC reports include, among other things, the reason for detention, the initiator of the motion for pretrial detention, arrest information, case disposition information, and certain defendant characteristics.

The Department of Justice's interest in monitoring implementation of the Act has not been limited to collecting statistical information. In October 1985, within a year of the Act's passage, the Criminal Division conducted a preliminary review of the implementation of the Bail Reform Act by surveying government attorneys, judicial and pretrial services officers, and others. We found that a number of factors affected the ways in which U.S. Attorneys' offices were implementing the pretrial detention provisions. These factors included: the local judicial climate, such as judicial interpretation of the statute and magistrates' proclivities to issue detention orders and/or set money bonds; the nature and extent of crime and the types of offenders in the

district; and the internal policies of U.S. Attorneys' offices. Many of the issues raised at that time have been resolved.

In January 1986, the Department issued a report on the first year of experience with bail reform. */ Along with such information as the number of hearings and number of persons detained, it provided some forceful examples of cases in which defendants were detained prior to trial primarily for their dangerousness. I would like to share a few cases from that report and from a more recent survey:

- An Assistant U.S. Attorney in Boise, Idaho indicted 23 people associated with the Aryan Nation terrorist organization. This group was involved in bank robberies resulting in the loss of millions of dollars, and it had safehouses all over the country and cars waiting in many locations for quick get-aways. The group had hired contract killers to kill witnesses, and the AUSA learned through a wiretap that the group had been following his daughter. These people probably would not have been detained prior to the Bail Reform Act because they could have met any level of bond and because the vast reach of the group would have assured a safe haven for any who wanted to flee.
- In the Northern District of Ohio, a defendant, charged with conspiracy to distribute one kilo of cocaine, threatened an undercover agent and told the case agent that his children were dead.
- In the Middle District of Florida, a defendant was found in possession of 32 hand grenades and numerous machine

---

*/ The First Year Under the Comprehensive Crime Control Act of 1984, P.L. 98-473: A Summary of Major Activities of the United States Department of Justice from October 12, 1984 through October 30, 1985.

guns. He had threatened to kill an undercover officer and set off explosives in the courthouse.

- In my district, the Northern District of Illinois, a defendant was charged with kidnapping, robbing, and raping two women while armed with a pistol. The victims were taken across state lines by the defendant and two others.
- In the Western District of Washington, a defendant worked for a traveling circus. In 1985, as the circus moved from state to state, the defendant began a kidnap-rape-and-murder crime spree through the Carolinas, Idaho and Oregon that ended in Washington State. It was established at trial that the defendant had kidnapped and brutually raped at least five women during a two-year period, including one woman he killed by shooting her at point-blank range through the head. His victims said that the defendant had threatened to kill them if they ever testified against him.
- In the District of Arizona, a defendant was charged with raping a nine year old child on an Indian reservation. He had an extensive list of tribal convictions, lived one mile from the victim, and had previously threatened a witness against him in another case. (The U.S. Attorney's office in Arizona believes that the use of the pre-trial detention provisions has protected the Indian community from numerous violent offenders who previously would have been released before trial because they were seldom considered flight risks.)

For a victim of crime, the criminal act is a traumatic, frightening, and frequently life-threatening experience. The prospect that such an event could occur again magnifies the victim's distress

over the original act. Intimidation and harassment of a victim is a perpetrator's most effective method of capitalizing on this fear and anxiety. The examples cited above demonstrate the value of the pretrial detention provisions in protecting victims as well as the community at large.

In July 1987, the Criminal Division surveyed 15 U.S. Attorneys' offices regarding their pretrial detention practices. They sent questionnares to five large, five medium, and five small offices across the nation to obtain a cross-section of how bail reform is working on a day-to-day basis. The survey results provided the Department with an overview of how its attorneys are handling pretrial detention issues.

The survey responses indicate that the government uses the statute's provisions most frequently to detain persons accused of drug offenses, bank robberies, weapons offenses, and alien-related offenses. The responses also show that the Act is used to detain persons accused of other crimes that are problematic in specific geographic locations. For example, the U.S. Attorney's office in the Eastern District of New York, a major port of entry, said that violation of currency laws is one of the offenses for which it frequently requests detention.

The responses also show that U.S. Attorneys have communicated to their staffs the need for judicious use of the Bail Reform Act's provisions. While most U.S. Attorneys do not have formal written guidelines, they emphasized that they employ the factors set forth in the statute. The statute provides fairly specific guidance on the circumstances that may qualify for pretrial detention (Section 3142(e) and (f)).

During the last five years, the percentage of defendants detained prior to trial has risen slowly, paralleling an increase in the number

and seriousness of federal drug cases. The BJS study, discussed earlier, surveyed defendants held until trial both before and after passage of the Bail Reform Act (1983 and 1985). They found that the percentage of federal defendants held for the entire time prior to trial, either on pretrial detention or for failure to pay bail, increased from 24% before the Act to 29% after. That percentage has continued to increase slightly, according to the most recent AOUSC data. For the one-year period ending March 1989, 32% of all federal defendants were detained: 23% under provisions of the Bail Reform Act, and an additional 9% who were unable to make bail. Both before and after the Act, however, about half of all defendants were released without financial conditions. The Act's concern for public safety is indicated by the type of offender detained under its provisions. For example, the BJS study showed that the likelihood of being detained prior to trial was 63% higher for those accused of causing injuries, 21% higher for those charged with violent offenses involving firearms, 20% higher for persons accused of serious narcotics violations, and 17% higher for those persons classified as dangerous during pretrial interviews.

GAO Report

In addition to the information discussed above, the U.S. General Accounting Office also reported on bail reform in Criminal Bail: How Bail Reform is Working in Selected District Courts, issued in October 1987. We read this report with great interest and found that it confirmed much of the information we have been receiving about the implementation of bail reform.

First, the report noted that court officials and representatives of the U.S. Attorneys' offices told GAO that the new law is an improvement over the old law because of its more direct and honest approach (GAO Report p. 33).

The government's conservative approach in seeking pretrial detention was borne out by some statistics in this report. GAO found that the government sought pretrial detention in about 24% of all felony cases in its sample. */

Use of Money Bonds Resulting in Detention

One of GAO's findings highlights the issue of the continued use of high money bonds that the defendant cannot pay. GAO found varying opinions among judicial officers on whether high money bonds may be used for flight risk defendants (GAO Report pp. 24-25). While the statute itself is not completely clear, the Department's interpretation is consistent with case law and the legislative history. It is our view that the Act does not preclude a high money bond if that is the only means that the judicial officer believes will ensure the defendant's appearance and the amount is reasonable for the defendant. If the defendant chooses not to pay the bond or does not challenge the amount's reasonableness, then he can be detained for non-payment. According to the BJS study, most (63%) defendants required to post bail are able to raise the money or collateral and are released. High money bonds may not, however, be used as a sub rosa means of detaining dangerous persons.

This interpretation follows the legislative history of the Act (S. Rept. No. 98-225, 98th Cong., 1st Sess. (1983) at 16), and has been

---

*/ GAO Report, p. 34. GAO also found that motions for pretrial detention were granted in about 62% of all cases in which it was sought in this sample (p. 34). The Department's figures show a higher success rate of 74% during the year ending March 1989 (see p. 7, above).

endorsed uniformly in the reported decisions of the courts. */ We believe that these court decisions should remove any lingering uncertainty surrounding this issue.

Conclusion

In conclusion, the Department of Justice is extremely pleased with the results of the Bail Reform Act of 1984 and with the Supreme Court's decision upholding the constitutionality of pretrial detention based on dangerousness. The pretrial detention process is now more honest because it permits a defendant to address the basis for his detention in open court. It enhances protection of the public from dangerous arrestees while providing the judicial officer with a number of options in releasing or detaining defendants. In addition, the Bail Reform Act has limited the number of convicted defendants who return to the street pending their sentence or appeal.

As a final note, the Administration will propose further strengthening this importnt Act by adding new predicate offenses in 18 U.S.C. § 3142(f) relating to explosives and firearms. Pretrial detention has become an important tool for federal prosecutors, and we firmly believe that they will continue their pattern of using it judiciously and wisely.

I will be happy to answer any questions you might have.

---

*/ United States v. Szott, 768 F.2d 159 (7th Cir. 1985), United States v. Gotay, 609 F. Supp. 156 (S.D.N.Y. 1985), United States v. Westbrook, 780 F.2d 1185 (5th Cir. 1986). See also, United States v. Wong-Alvarez, 779 F.2d 583 (11th Cir. 1985), and United States v. Jessup, 757 F.2d 378 (1st Cir. 1985).

U.S. Department of Justice

United States Attorney
Northern District of Illinois

United States Courthouse
Chicago, Illinois 60604

July 11, 1989

Senator Paul Simon
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Senator Simon:

Thank you for your note regarding my testimony on the Bail Reform Act of 1984. I was happy to be of service. Please feel free to call on me regarding any other matter that would be helpful to you.

During my testimony, I mentioned that on average the Cook County, Illinois, courts now issue about 540 bond-forfeiture warrants per month in drug cases alone. Senator Specter asked me to supplement my testimony with the number of drug cases Cook County processes per month. After checking with the Cook County State's Attorney's Office, I can tell you that the number is approximately 5,000. Thus, bond-forfeiture warrants must be issued for more than 10% of the Cook County drug defendants.

Best regards.

Very truly yours,

ANTON R. VALUKAS
United States Attorney

Senator SPECTER. Mr. Chairman, I regret that I have to leave because I very much want to hear these witnesses. What I would like to ask is, during the course of the hearing or perhaps in writing afterward, if Mr. Reiser and Mr. Jones could respond to the questions about their policy determinations as to whether the preventive detention law is a good one. If they had to vote yes or no for preventive detention, would they vote yes or no today? Do they think we are holding the right people in jail? Do they think too many people are being held who ought not to be held? I would like them to respond to Judge Newman's specific suggestions for amendment, and I will very closely study the record.

Senator SIMON. All right. Thank you, Senator Specter, for the suggestion on the hearing, too.

Mr. Arnold Jones, the Director of Administration of Justice Issues for the General Accounting Office, and Mr. David—do you pronounce it Rieser or Reiser?

Mr. REISER. Reiser, Your Honor.

Senator SIMON. Reiser, of the Public Defender Service here in Washington.

Mr. Jones, we are very happy to have you here.

PANEL CONSISTING OF ARNOLD P. JONES, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, U.S. GENERAL ACCOUNTING OFFICE; AND DAVID A. REISER, STAFF ATTORNEY, PUBLIC DEFENDER SERVICE, WASHINGTON, DC

STATEMENT OF ARNOLD P. JONES

Mr. JONES. I am very happy to be here today, Mr. Chairman. What I would like to do—and I recognize that brevity is paramount. As you know, we have a report which we did for the other side and issued in 1987 in which we were asked to compare the old and new bail laws and look at the extent and reasons that defendants were detained before trial and the extent to which defendants failed to appear or were arrested for committing new crimes. That is a matter of record and I would like to submit it for the record.

I have a rather lengthy statement that I would like to submit for the record, also.

Senator SIMON. We will enter that in the record.

Mr. JONES. In listening to the discussion that took place before, it seemed to me you were concerned, Mr. Chairman, with any information we might have on postconviction activity.

I would like to, if you will, deviate from what we said we would do. We have some preliminary information on postconviction results that we are doing, again, for the other side. It is very preliminary, but it gets to the very core of issues that you and Senator Specter were concerned with.

This is preliminary. We expect to issue a report to the requesting chairman at some point in the near future, but I think from your point of view, let me just provide this information.

Based on looking at the same data, the same cases that we used in preparing the report that is now on the record, we estimate that about 31 percent of those persons found guilty were detained while awaiting imposition of sentence under the old law. Under the new law, 39 percent of those found guilty were detained awaiting impo-

sition of sentence. So, in the four districts that we used, we are talking roughly 2,000 to 2,400 persons.

Offenders who were in custody during the entire pretrial period were kept in custody while awaiting imposition of sentence in almost every case under both laws. Respectively, we are talking about 97 percent of the cases.

For criminal cases commenced in the four districts in calendar year 1986, 90 percent of the offenders who appealed their conviction or sentence were in custody during the appeals process. Now, we didn't obtain statistics for cases under the old law, for one reason; it was outside of the scope of our review.

Those, I think, are interesting statistics that will make for interesting hearings when you analyze them.

Senator SIMON. Just so that I can go over those again, in terms of, first of all, the 39 percent who are detained, the balance of the 61 percent who are not detained——

Mr. JONES. No, no. Under the new law, now, of the persons subsequently found guilty, 39 percent of those were then detained while they were awaiting imposition of sentence.

Senator SIMON. OK.

Mr. JONES. So while they were appealing or whatever, they were kept.

Senator SIMON. I misunderstood.

Mr. JONES. And I didn't do as good a job——

Senator SIMON. But then in terms of those who are convicted and appeal, go over those figures again.

Mr. JONES. Under the old law—and I must be very careful here—31 percent of the persons who were found guilty under the old law were detained while they were awaiting imposition of sentence. Under the new law, it is 39 percent.

Senator SIMON. OK, but then following conviction and they appeal——

Mr. JONES. We are talking about the same thing, Mr. Chairman.

Senator SIMON. OK, that is the same——

Mr. JONES. I am not an attorney either and I share the inability to speak as——

Senator SIMON. All right.

Mr. JONES. We are saying that once I have gone to trial, I have been found guilty, I now appeal.

Senator SIMON. Yes.

Mr. JONES. In that case, under the new law, 39 percent of those people were detained while awaiting a determination of the appeal.

Senator SIMON. OK, all right. Then, in crimes of violence or drug trafficking, do you have that broken down?

Mr. JONES. We don't have the statistics broken down by type of crime. However, as I told you earlier, offenders who were in custody during the entire pretrial period—now, these would be people who, under the new law, were determined to meet the standards, meet the criteria of dangerousness, if you will, or likelihood of flight, and for whom the government then sought that they be detained and they were detained.

So, of those persons who were detained pretrial after they were found guilty, in almost every case they were not released postconviction. They were kept under wraps in 97 percent of the cases. So,

the trend was that if you satisfied conditions that you and I would call—you were likely to do things after you were arrested. If they didn't think you were a good enough citizen to be released prior to arrest awaiting trial, it was also the case that they didn't think you were a good enough citizen, once convicted, to be released waiting for imposition of sentence. That is an interesting statistic that I think you were concerned with.

Senator SIMON. I interrupted you in your statement.

Mr. JONES. We have other information, because I think there was some concern about how long people were being detained preconviction and postconviction. We have just some statistics.

Total time in custody for offenders detained from arrest to sentence was about the same under both laws—about 164 days under the old law and about 162 under the new law. To back off a little bit of information about speedy trials, and not to get into any disagreement with a judicial officer, but, on average, in the four districts we looked at, we had about 114 days of detention from arrest to trial under the old law, and about 106 days from arrest to trial under the new law.

These are times of detention, and these are average times. We have got some ranges, but these are average times. So if you think about it, with the 90-day limit imposed by speedy trials, you are talking about a deviation in one case of 24 days and in another of 16 days, on average. Now, that is on average.

And, admittedly, we looked at—and we know the districts we looked at. We looked at northern Indiana, southern Florida, eastern New York, and Arizona. And that was, I think, 1985, but that is all I am standing on today.

Mr. Chairman, with the submission of that information for deliberation by the subcommittee, I would like to now end my statement.

Senator SIMON. All right. Thank you very, very much, Mr. Jones.

Mr. JONES. Thank you.

[Mr. Jones submitted the following material for the record:]

United States General Accounting Office

GAO Testimony

For Release
on Delivery
Expected at
10:00 a.m. EST
Friday
June 16, 1989

Criminal Bail: How Bail Reform is Working in Selected District Courts

Statement of
Arnold P. Jones, Director
Administration of Justice Issues

Before the
Subcommittee on the Constitution
Committee on the Judiciary
United Stated Senate

GAO/T-GGD-89-30

GAO Form 160 (12/87)

HOW BAIL REFORM IS WORKING IN SELECTED DISTRICT COURTS

SUMMARY OF STATEMENT BY
ARNOLD P. JONES
DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES
U.S. GENERAL ACCOUNTING OFFICE

In response to a congressional request, GAO reviewed the impact of the Bail Reform Act of 1984 in four district courts. This law replaced the Bail Reform Act of 1966 and changed the rules for detaining defendants before their trials.

In summary, in the four districts:

-- About 26 percent and 31 percent of the defendants were detained while awaiting their trials under the old and new laws, respectively. The stated reasons they were detained changed with more defendants being detained because they were considered likely to flee, a danger to a person(s) or the community, or both a flight and danger risk.

-- A provision of the new law intended to aid in the detention of certain types of defendants considered dangerous or likely to flee before their trial was used to varying degrees. The new law does not require federal prosecutors to, nor did they, seek pretrial detention of all defendants who met the law's criteria. Pretrial detention was sought for 39 percent of the defendants who met the criteria and 61 percent of them were detained.

-- Under both the old and new laws, a small percentage of defendants failed to appear for a judicial proceeding (about 2 percent) or were arrested for committing a new crime while released on bail (1.8 and 0.8 percent under the old and new laws, respectively).

-- Court officials GAO interviewed believed the new law was generally an improvement over the old, but about half of them expressed concern over the time needed to attend detention hearings that are required by the new law.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our assessments of the impacts of the implementation of the Bail Reform Act of 1984 in selected district courts.

BACKGROUND

In the federal criminal justice system, one of the first decisions a judicial officer makes after a defendant comes into federal custody is whether the defendant will be released or detained before trial. To decide, the judicial officer will hold a bail hearing to obtain information about the defendant.

Currently, the judicial officer can elect to release the defendant contingent on financial or nonfinancial conditions, detain the defendant temporarily, or can deny bail and order the defendant detained during the pretrial period. In the latter case, the judicial officer must hold a separate detention hearing to determine whether detention is warranted or whether any release condition(s) will better ensure the person's appearance and the safety of the community. If a defendant does not comply with the nonfinancial conditions imposed by the judicial officers or fails to pay the financial bail, he or she can be detained without a detention hearing.

The Bail Reform Act of 1984 greatly expanded the extent to which judicial officers, in deciding whether to set or deny bail, can consider whether a defendant is dangerous. Under the old bail law (the Bail Reform Act of 1966), a defendant could only be denied bail and detained for dangerousness if the person was charged with an offense punishable by death (i.e., a capital offense). The new law specifies a wider range of defendants that can be detained as dangerous and provides specific criteria for

identifying who is dangerous. By so doing, the new law intended to eliminate the use of sub rosa detention which refers to the setting of an extremely high money bail as an indirect method of detaining a defendant considered dangerous.

The new law also contains a provision which may be applied to certain defendants who the law defines as flight or danger risks. The provision--known as the "rebuttable presumption"--shifts the burden to the defendant to show that he/she is not a flight and/or danger risk. However, the prosecutor must still persuade the court that the defendant is a flight or danger risk.

On October 23, 1987, we issued a report to the Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Committee on the Judiciary, entitled Criminal Bail: How Bail Reform Is Working in Selected District Courts (GAO/GGD-88-6). We did our work between December 1985 and April 1987 in four courts--northern Indiana, Arizona, southern Florida, and eastern New York. Our objectives were to compare for the old and new bail laws the extent and reasons that defendants were detained before trial and the extent defendants failed to appear for a judicial proceeding or were arrested for committing a new crime. We also reviewed the extent of use of the rebuttable presumption provision of the new law and obtained court officials views about the new law.

To satisfy our objectives, in each district we compared random samples of criminal felony cases commenced during two 6-month periods under the old and new laws--January through June 1984 and January through June 1986. We also interviewed judicial officers, prosecutors, defenders, and probation or pretrial services officers. We estimate that about 2,100 criminal felony cases under the old law and 2,200 cases under the new law were

initiated in the four districts during the two periods we reviewed.

In summary, we found that about 26 percent and 31 percent of defendants were detained under the old and new laws, respectively. The stated reasons they were detained changed with more defendants being detained because they were considered to be a flight and/or danger risk. The percentages of defendants released on bail who later failed to appear for judicial proceedings or were arrested for committing a new crime were low under both the old and new bail laws. Court officials generally believed the new law is an improvement over the old law.

REASONS FOR DETENTION

Under the old bail law, all of the defendants detained in the four districts were detained because of failure to pay financial bail set by the courts. Failure to pay financial bail as a reason for detention decreased to 0 percent in northern Indiana, 2 percent in eastern New York, and 34 percent in Arizona, under the new bail law. In these districts, flight and/or danger risk became the predominant reason for detention. In southern Florida, 84 percent of defendants were detained under the new law because of failure to pay financial bail.

The large percentage of defendants in southern Florida who were detained for not paying their financial bail and, to a lesser extent, in Arizona raised the question of whether the judicial officers were using high financial bail as an indirect method of detaining dangerous defendants (sub rosa detention). In looking at the court records and talking to the judicial officers, we found no evidence to indicate that judicial officers in southern Florida or Arizona used sub rosa detention to detain dangerous defendants.

The new law leaves open to interpretation whether money bail can be set at an amount the defendant is unable to pay. We found the four districts were evenly split on their interpretation and implementation of this provision. It should be noted that as of October 1987, five court decisions had found that bail did not have to be set at an amount that the defendant could pay.

USE OF REBUTTABLE PRESUMPTION PROVISION

Use of the rebuttable presumption provision varied from district to district. From our analysis of court records, we found that 93 percent of the defendants who met the rebuttable presumption criteria had been indicted for a drug offense for which the maximum term of imprisonment was 10 years or more. The new law does not require federal prosecutors to, nor did they, seek pretrial detention of all defendants who met the rebuttable presumption criteria. Pretrial detention was sought for 39 percent who met the criteria, and prosecutors were successful in obtaining detention in 61 percent of these cases.

EXTENT DEFENDANTS FAILED TO APPEAR AND COMMITTED NEW CRIMES

The percentage of defendants released on bail who failed to appear for judicial proceedings was 2.1 and 1.8 percent under the old and new laws, respectively. The percentage of released defendants who were arrested for committing new crimes was 1.8 and 0.8 percent under the old and new laws, respectively.

COURT OFFICIALS' VIEWS

The predominant feeling of court officials in the four districts was that the new bail law is an improvement over the old law and that it is more direct and honest because the law allows the judicial system to label a defendant as dangerous when that is

what he or she is thought to be. However, a common concern expressed by about half of the court officials was the time needed to attend detention hearings.

FOLLOW-ON REVIEW OF THE BAIL REFORM ACT OF 1984

We are now completing a follow-on review of the impact of the Bail Reform Act of 1984 for the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The Subcommittee asked us to update and expand our first effort which I have summarized for you today. Our current effort will provide additional information on implementation of the law including the length of detention, post conviction detention, and sentencing outcomes of detained and released defendants. We should be able to provide you with the details of our findings later this year.

- - - - -

This concludes my prepared statement. I would be pleased to respond to any questions.

of a joint resolution within thirty days after submission of the revised filing, then the Congress may, if it deems it is in the best interests of the participants, take any one or more of the following actions:

"(i) Retain an independent qualified public accountant on behalf of the participants to perform an audit.

"(ii) Retain an enrolled actuary on behalf of the participants to prepare an actuarial statement.

The Board and the Mayor shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund and the retirement program are necessary for performing such audit or preparing such statement.

"(C) If a revised filing is rejected under subparagraph (B) or if a filing required under this title is not made by the date specified, no funds appropriated for the Fund with respect to which such filing was required as part of the Federal payment may be paid to the Fund until such time as an acceptable filing is made. For purposes of this subparagraph, a filing is unacceptable if, within thirty days of its submission, the Congress enacts into law a joint resolution disapproving such filing.".

(n) The provisions of this section shall be effective hereafter without limitation as to fiscal year, notwithstanding any other provision of this joint resolution.

TITLE II

Comprehensive Crime Control Act of 1984. 18 USC 1 note.

This title may be cited as the "Comprehensive Crime Control Act of 1984."

SEC. 201. Section 102 of this joint resolution (H.J. Res. 648) shall not apply with respect to the provisions enacted by this title.

CHAPTER I—BAIL

Bail Reform Act of 1984. 18 USC 3141 note.

SEC. 202. This chapter may be cited as the "Bail Reform Act of 1984".

SEC. 203. (a) Sections 3141 through 3151 of title 18, United States Code, are repealed and the following new sections are inserted in lieu thereof:

18 USC 3141.

"§ 3141. Release and detention authority generally

"(a) PENDING TRIAL.—A judicial officer who is authorized to order the arrest of a person pursuant to section 3041 of this title shall order that an arrested person who is brought before him be released or detained, pending judicial proceedings, pursuant to the provisions of this chapter.

"(b) PENDING SENTENCE OR APPEAL.—A judicial officer of a court of original jurisdiction over an offense, or a judicial officer of a Federal appellate court, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person be released or detained pursuant to the provisions of this chapter.

18 USC 3142.

"§ 3142. Release or detention of a defendant pending trial

"(a) IN GENERAL.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

"(1) released on his personal recognizance or upon execution of an unsecured appearance bond, pursuant to the provisions of subsection (b);

"(2) released on a condition or combination of conditions pursuant to the provisions of subsection (c);

"(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion pursuant to the provisions of subsection (d); or

"(4) detained pursuant to the provisions of subsection (e).

"(b) RELEASE ON PERSONAL RECOGNIZANCE OR UNSECURED APPEARANCE BOND.—The judicial officer shall order the pretrial release of the person on his personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of his release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

"(c) RELEASE ON CONDITIONS.—If the judicial officer determines that the release described in subsection (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, he shall order the pretrial release of the person—

"(1) subject to the condition that the person not commit a Federal, State, or local crime during the period of release; and

"(2) subject to the least restrictive further condition, or combination of conditions, that he determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

"(A) remain in the custody of a designated person, who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

"(B) maintain employment, or, if unemployed, actively seek employment;

"(C) maintain or commence an educational program;

"(D) abide by specified restrictions on his personal associations, place of abode, or travel;

"(E) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

"(F) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

"(G) comply with a specified curfew;

"(H) refrain from possessing a firearm, destructive device, or other dangerous weapon;

"(I) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

"(J) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

"(K) execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

"(L) execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;

"(M) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

"(N) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The judicial officer may not impose a financial condition that results in the pretrial detention of the person. The judicial officer may at any time amend his order to impose additional or different conditions of release.

"(d) TEMPORARY DETENTION TO PERMIT REVOCATION OF CONDITIONAL RELEASE, DEPORTATION, OR EXCLUSION.—If the judicial officer determines that—

"(1) the person—

"(A) is, and was at the time the offense was committed, on—

"(i) release pending trial for a felony under Federal, State, or local law;

"(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

"(iii) probation or parole for any offense under Federal, State, or local law; or

"(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

"(2) the person may flee or pose a danger to any other person or the community;

he shall order the detention of the person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B), the person has the burden of proving to the court that he is a citizen of the United States or is lawfully admitted for permanent residence.

"(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f), the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the

community, he shall order the detention of the person prior to trial. In a case described in (f)(1), a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if the judge finds that—

"(1) the person has been convicted of a Federal offense that is described in subsection (f)(1), or of a State or local offense that would have been an offense described in subsection (f)(1) if a circumstance giving rise to Federal jurisdiction had existed;

"(2) the offense described in paragraph (1) was committed while the person was on release pending trial for a Federal, State, or local offense; and

"(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1), whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), section 1 of the Act of September 15, 1980 (21 U.S.C. 955a), or an offense under section 924(c) of title 18 of the United States Code.

"(f) DETENTION HEARING.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) will reasonably assure the appearance of the person as required and the safety of any other person and the community in a case—

"(1) upon motion of the attorney for the Government, that involves—

"(A) a crime of violence;

"(B) an offense for which the maximum sentence is life imprisonment or death;

"(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); or

"(D) any felony committed after the person had been convicted of two or more prior offenses described in subparagraphs (A) through (C), or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) if a circumstance giving rise to Federal jurisdiction had existed; or

"(2) Upon motion of the attorney for the Government or upon the judicial officer's own motion, that involves—

"(A) a serious risk that the person will flee;

"(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the

Continuance.

attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the Government may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or on his own motion, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether he is an addict. At the hearing, the person has the right to be represented by counsel, and, if he is financially unable to obtain adequate representation, to have counsel appointed for him. The person shall be afforded an opportunity to testify, to present witnesses on his own behalf, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing.

"(g) FACTORS TO BE CONSIDERED.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

"(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

"(2) the weight of the evidence against the person;

"(3) the history and characteristics of the person, including—

"(A) his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

"(B) whether, at the time of the current offense or arrest, he was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

"(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(2)(K) or (c)(2)(L), the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

"(h) CONTENTS OF RELEASE ORDER.—In a release order issued pursuant to the provisions of subsection (b) or (c), the judicial officer shall—

"(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

"(2) advise the person of—

"(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

"(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

"(C) the provisions of sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

"(i) CONTENTS OF DETENTION ORDER.—In a detention order issued pursuant to the provisions of subsection (e), the judicial officer shall—

"(1) include written findings of fact and a written statement of the reasons for the detention;

"(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

"(3) direct that the person be afforded reasonable opportunity for private consultation with his counsel; and

"(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

"(j) PRESUMPTION OF INNOCENCE.—Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

"§ 3143. Release or detention of a defendant pending sentence or appeal

18 USC 3143.

"(a) RELEASE OR DETENTION PENDING SENTENCE.—The judicial officer shall order that a person who has been found guilty of an offense and who is waiting imposition or execution of sentence, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142 (b) or (c). If the judicial officer makes such a finding, he shall order the release of the person in accordance with the provisions of section 3142 (b) or (c).

"(b) RELEASE OR DETENTION PENDING APPEAL BY THE DEFENDANT.—The judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

"(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142 (b) or (c); and

"(2) that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the judicial officer makes such findings, he shall order the release of the person in accordance with the provisions of section 3142 (b) or (c).

"(c) RELEASE OR DETENTION PENDING APPEAL BY THE GOVERNMENT.—The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States pursuant to the provisions of section 3731 of this title, in accordance with the provisions of section 3142, unless the defendant is otherwise subject to a release or detention order.

18 USC 3144.

"§ 3144. Release or detention of a material witness

"If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

18 USC app.

18 USC 3145.

"§ 3145. Review and appeal of a release or detention order

"(a) REVIEW OF A RELEASE ORDER.—If a person is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court—

"(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

"(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

"(b) REVIEW OF A DETENTION ORDER.—If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

"(c) APPEAL FROM A RELEASE OR DETENTION ORDER.—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly.

28 USC 1291.

18 USC 3146.

"§ 3146. Penalty for failure to appear

"(a) OFFENSE.—A person commits an offense if, after having been released pursuant to this chapter—

"(1) he knowingly fails to appear before a court as required by the conditions of his release; or

"(2) he knowingly fails to surrender for service of sentence pursuant to a court order.

"(b) GRADING.—If the person was released—

"(1) in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction, for—

"(A) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, he shall be fined not more than $25,000 or imprisoned for not more than ten years, or both;

"(B) an offense punishable by imprisonment for a term of five or more years, but less than fifteen years, he shall be fined not more than $10,000 or imprisoned for not more than five years, or both;

"(C) any other felony, he shall be fined not more than $5,000 or imprisoned for not more than two years, or both; or

"(D) a misdemeanor, he shall be fined not more than $2,000 or imprisoned for not more than one year, or both; or

"(2) for appearance as a material witness, he shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

A term of imprisonment imposed pursuant to this section shall be consecutive to the sentence of imprisonment for any other offense.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement that he appear or surrender, and that he appeared or surrendered as soon as such circumstances ceased to exist.

"(d) DECLARATION OF FORFEITURE.—If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) or is subject to the release condition set forth in section 3142 (c)(2)(K) or (c)(2)(L), the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

"§ 3147. Penalty for an offense committed while on release 18 USC 3147

"A person convicted of an offense committed while released pursuant to this chapter shall be sentenced, in addition to the sentence prescribed for the offense to—

"(1) a term of imprisonment of not less than two years and not more than ten years if the offense is a felony; or

"(2) a term of imprisonment of not less than ninety days and not more than one year if the offense is a misdemeanor.

A term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

"§ 3148. Sanctions for violation of a release condition 18 USC 3148

"(a) AVAILABLE SANCTIONS.—A person who has been released pursuant to the provisions of section 3142, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

"(b) REVOCATION OF RELEASE.—The attorney for the Government may initiate a proceeding for revocation of an order of release by

filing a motion with the district court. A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judicial officer in the district in which his arrest was ordered for a proceeding in accordance with this section. To the extent practicable, a person charged with violating the condition of his release that he not commit a Federal, State, or local crime during the period of release shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated. The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer—

"(1) finds that there is—

"(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

"(B) clear and convincing evidence that the person has violated any other condition of his release; and

"(2) finds that—

"(A) based on the factors set forth in section 3142(g), there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

"(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community. If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, he shall treat the person in accordance with the provisions of section 3142 and may amend the conditions of release accordingly.

"(c) PROSECUTION FOR CONTEMPT.—The judge may commence a prosecution for contempt, pursuant to the provisions of section 401, if the person has violated a condition of his release.

18 USC 3149.

"§ 3149. Surrender of an offender by a surety

"A person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, and if so arrested, shall be delivered promptly to a United States marshal and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of section 3148(b) whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond in accordance with the provisions of Rule 46 of the Federal Rules of Criminal Procedure. The person so committed shall be held in official detention until released pursuant to this chapter or another provision of law.

18 USC app.

18 USC 3150.

"§ 3150. Applicability to a case removed from a State court

"The provisions of this chapter apply to a criminal case removed to a Federal court from a State court.".

(b) Section 3154 of title 18, United States Code, is amended—

(1) in subsection (1), by striking out "and recommend appropriate release conditions for each such person" and inserting in lieu thereof "and, where appropriate, include a recommenda-

tion as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release"; and

(2) in subsection (2), by striking out "section 3146(e) or section 3147" and inserting in lieu thereof "section 3145".

(c) Section 3156(a) of title 18, United States Code, is amended—

(1) by striking out "3146" and inserting in lieu thereof "3141";

(2) in paragraph (1)—

(A) by striking out "bail or otherwise" and inserting in lieu thereof "detain or"; and

(B) by deleting "and" at the end thereof;

(3) in paragraph (2), by striking out the period at the end and inserting in lieu thereof "; and";

(4) by adding after paragraph (2) the following new paragraphs:

"(3) The term 'felony' means an offense punishable by a maximum term of imprisonment of more than one year; and

"(4) The term 'crime of violence' means—

"(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."; and

(5) in subsection (b)(1), by striking out "bail or otherwise" and inserting in lieu thereof "detain or".

(d) The item relating to chapter 207 in the analysis of part II of title 18, United States Code, is amended to read as follows:

"207. Release and detention pending judicial proceedings..... 3141".

(e)(1) The caption of chapter 207 is amended to read as follows:

"CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS".

(2) The section analysis for chapter 207 is amended by striking out the items relating to sections 3141 through 3151 and inserting in lieu thereof the following:

"3141. Release and detention authority generally.
"3142. Release or detention of a defendant pending trial.
"3143. Release or detention of a defendant pending sentence or appeal.
"3144. Release or detention of a material witness.
"3145. Review and appeal of a release or detention order.
"3146. Penalty for failure to appear.
"3147. Penalty for an offense committed while on release.
"3148. Sanctions for violation of a release condition.
"3149. Surrender of an offender by a surety.
"3150. Applicability to a case removed from a State court.".

SEC. 204. Chapter 203 of title 18, United States Code, is amended as follows:

(a) The last sentence of section 3041 is amended by striking out "determining to hold the prisoner for trial" and inserting in lieu thereof "determining, pursuant to the provisions of section 3142 of this title, whether to detain or conditionally release the prisoner prior to trial".

(b) The second paragraph of section 3042 is amended by striking out "imprisoned or admitted to bail" and inserting in lieu thereof

"detained or conditionally released pursuant to section 3142 of this title".

Repeal.
18 USC 3043.

(c) Section 3043 is repealed.

(d) The following new section is added after section 3061:

18 USC 3062.

"§ 3062. General arrest authority for violation of release conditions

"A law enforcement officer, who is authorized to arrest for an offense committed in his presence, may arrest a person who is released pursuant to chapter 207 if the officer has reasonable grounds to believe that the person is violating, in his presence, a condition imposed on the person pursuant to section 3142 (c)(2)(D), (c)(2)(E), (c)(2)(H), (c)(2)(I), or (c)(2)(M), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142(c)(2)(J).".

Ante, pp. 1976, 1985.

(e) The section analysis is amended—

(1) by amending the item relating to section 3043 to read as follows:

"3043. Repealed."; and

(2) by adding the following new item after the item relating to section 3061:

"3062. General arrest authority for violation of release conditions.".

SEC. 205. Section 3731 of title 18, United States Code, is amended by adding after the second paragraph the following new paragraph:

"An appeal by the United States shall lie to a court of appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.".

SEC. 206. The second paragraph of section 3772 of title 18, United States Code, is amended by striking out "bail" and inserting in lieu thereof "release pending appeal."

SEC. 207. Section 4282 of title 18, United States Code, is amended—

(a) by striking out "and not admitted to bail" and substituting "and detained pursuant to chapter 207"; and

(b) by striking out "and unable to make bail".

SEC. 208. Section 636 of title 28, United States Code, is amended by striking out "impose conditions of release under section 3146 of title 18" and inserting in lieu thereof "issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial".

18 USC app.

SEC. 209. The Federal Rules of Criminal Procedure are amended as follows:

(a) Rule 5(c) is amended by striking out "shall admit the defendant to bail" and inserting in lieu thereof "shall detain or conditionally release the defendant".

(b) The second sentence of rule 15(a) is amended by striking out "committed for failure to give bail to appear to testify at a trial or hearing" and inserting in lieu thereof "detained pursuant to section 3144 of title 18, United States Code".

(c) Rule 40(f) is amended to read as follows:

"(f) RELEASE OR DETENTION.—If a person was previously detained or conditionally released, pursuant to chapter 207 of title 18, United States Code, in another district where a warrant, information, or

Ante, pp. 1976, 1985.

indictment issued, the Federal magistrate shall take into account the decision previously made and the reasons set forth therefor, if any, but will not be bound by that decision. If the Federal magistrate amends the release or detention decision or alters the conditions of release, he shall set forth the reasons for his action in writing.".

(d) Rule 46 is amended— 18 USC app.

(1) in subdivision (a), by striking out "§ 3146, § 3148, or § 3149" and inserting in lieu thereof "§§ 3142 and 3144";

(2) in subdivision (c), by striking out "3148" and inserting in lieu thereof "3143";

(3) by amending subdivision (e)(2) to read as follows:

"(2) SETTING ASIDE.—The court may direct that a forfeiture be set aside in whole or in part, upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture."; and

(4) by adding the following new subdivision at the end thereof:

"(h) FORFEITURE OF PROPERTY.—

"Nothing in this rule or in chapter 207 of title 18, United States Code, shall prevent the court from disposing of any charge by entering an order directing forfeiture of property pursuant to 18 U.S.C. 3142(c)(2)(K) if the value of the property is an amount that would be an appropriate sentence after conviction of the offense charged and if such forfeiture is authorized by statute or regulation.". *Ante*, pp. 1976, 1985.

(e) Rule 54(b)(3) is amended by striking out "under 18 U.S.C. § 3043, and". 18 USC app.

SEC. 210. Rule 9(c) of the Federal Rules of Appellate Procedure is amended by striking out "3148" and inserting in lieu thereof "3143", and following the word "community", inserting "and that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or in an order for a new trial". 28 USC app.

CHAPTER II—SENTENCING REFORM

Sentencing Reform Act of 1984. 18 USC 3551 note.

SEC. 211. This chapter may be cited as the "Sentencing Reform Act of 1984".

SEC. 212. (a) Title 18 of the United States Code is amended by—

(1) redesignating sections 3577, 3578, 3579, 3580, 3611, 3612, 3615, 3617, 3618, 3619, 3620, and 3656 as sections 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, and 3672 of a new chapter 232 of title 18 of the United States Code, respectively; *Post*, p. 2175.

(2) repealing chapters 227, 229, and 231 and substituting the following new chapters: Repeals. 18 USC 3561 *et seq.*, 3611 *et seq.*, 3651 *et seq.*

"CHAPTER 227—SENTENCES

"Subchapter

"A. General Provisions 3551
"B. Probation 3561
"C. Fines 3571
"D. Imprisonment 3581

Senator SIMON. Mr. Reiser.

STATEMENT OF DAVID A. REISER

Mr. REISER. Thank you, Mr. Chairman. I would like to incorporate my written testimony. Also, there was a brief which I submitted to the subcommittee last year which may be of some interest, if you still have it, in anticipation of some hearings that didn't take place.

Senator SIMON. Can you pull that microphone a little closer to you there?

Mr. REISER. Yes. I made three points and I will just briefly reiterate them now. The first is that I very much agree with Judge Newman about the speedy trial concerns, and I respectfully disagree with what Mr. Jones just said about the statistics about speedy trial.

Average statistics about length of detention don't tell this subcommittee or the Congress anything very useful about whether people are being held too long, because at the extreme end you are going to have people who are pleading guilty moments after they are arrested. And at the other extreme, as Judge Newman testified earlier, you are going to have people who are being held for months and even years.

The problem is not the average, necessarily, but the deviations from the average. And the purpose of having absolute time limits of the kind that we have here in the District of Columbia is to keep things close to the average as opposed to allowing very substantial deviations.

I believe that there may be some additional statistics which would be possible to generate for the subcommittee from this local jurisdiction, and I will try and arrange to have those provided.

Second, with regard to the rebuttable presumptions, I think the most important thing for the subcommittee to realize is that when we are talking about the class of drug offenses to which the rebuttable presumption applies, we are not talking about major drug traffickers.

The way that the statute is defined, it applies to any offense which is punishable by a maximum sentence, not a minimum sentence, because there are mandatory minimum sentences of 10 years which only apply to large quantities. I am talking about maximum sentences of 10 years.

Although I heard Mr. Valukas that most Federal cases don't involve dime bags of heroin, the fact is that if somebody is arrested with a dime bag of heroin on a Federal day in New York or in Chicago, they can be preventively detained, even if it is some hopeless, pathetic crack addict or drug addict who needs drug treatment far more than they need preventive detention, even if it is somebody who has no prior criminal record, even if it is somebody who, I would bet that not a single Member of Congress, were that person sitting as a judicial officer, would have contemplated detaining under the 1984 act.

And I say this because as my written testimony shows, there was an obscenity committed over in the U.S. District Court a few months ago when an 18-year-old girl who was pregnant was arrest-

ed, asleep inside a crack house, where anybody who has any sense of how things work would have realized she just passed out.

Because she was close to a lot of drugs in the crack house, she was charged with possession with intent to distribute. There was probable cause, perhaps, and she was detained by a U.S. magistrate.

I think it is very helpful to have heard Mr. Valukas say that they can't detain certain people without the presumptions. That was a person who could not have been detained if somebody had had to try and convince a magistrate that there was clear and convincing evidence of dangerousness.

Judge Newman said something heretical before, and I am going to just take 1 second to say something heretical now because I think I am a little closer to the drug problem, not personally, but professionally, than probably anybody else in this room.

There are an awful lot of people who fall within the net of this 10-year maximum sentence who have no business being detained, who are living awful lives in awful public housing projects, who have no hope of jobs because they don't know anybody who could get them a job. They don't know how to fill out job applications.

And I am not defending drug dealing, not for a second, because I think it is awful. Some crack head broke my window and stole my stereo yesterday. But the point is that we are not going to solve that drug problem by preventively detaining people.

And we are particularly not going to solve the drug problem by preventively detaining very, very minor actors in a system because those people are going to get out of jail eventually and their lives are going to be even more hopeless and despairing than they were before.

That sort of leads me to my third point, and I will be very brief because I know that I am the end. The act, I think, and certainly the 1982 Pre-Trial Services Act, contemplated that there be lots of alternatives. And I know, Mr. Chairman, you inquired several times about electronic monitoring.

There are lots and lots of ways that, once we deal with the issue of dangerousness explicitly, we can try and figure out what it is about a particular individual that makes us be concerned about dangerousness.

For instance—and I think this responds directly to something that Mr. Valukas said earlier—let us say we have got some young kid who is picked up on a drug offense. I am certainly not condoning that, but that kind of person can be effectively detained through some kind of electronic monitoring because that person, unlike Tony Salerno, who may be able to order a murder with a word, can't go out and sell drugs without being able to get more than 150 feet away from a telephone. So, there are things that we could do if we are creative.

Senator SIMON. Is the electronic device being used in this area at all?

Mr. REISER. Yes, sir; as I said in my written testimony, as I am sure you know, prison overcrowding is probably more serious here than it is practically anywhere else. They have developed a program; it is called Operation Progress.

There are really two programs that are pretty innovative and, I think, pretty well respected by the judiciary. And there are three that—I suppose there is a third that is pretty well respected by the judiciary that I don't think too much of.

One is the electronic monitoring program, which is called Operation Progress. The other is called Intensive Third Party Custody where people stay in a halfway house until they have jobs. They have very, very rigorous curfews which are very, very closely enforced.

As Judge Becker said earlier, doing this kind of thing, doing this kind of pretrial supervision costs money. I think it is worth the money because I think it is productive. If you have defendants who have drug problems, it is much more productive to try and deal with those problems earlier and get them straightened out earlier than to just lock them up.

That is my feeling. Obviously, I am a defense lawyer, but I think it makes a lot of sense, but it does cost money. It means that this body would have to commit some more resources to pretrial services than it traditionally has. The need for that arises from the 1984 act.

If you are just releasing people either on bond or not, then you don't need a lot of direct supervision. If you are really trying to deal with preventing recidivism, you can do things like have telephone calls, make sure people are in at night, things like that. They work if the resources are there.

The only other thing I would add is that I would very strongly encourage the subcommittee to try and gather some more information about how things are really working now. Based on the experience in the District of Columbia, there was an explosion in the use of preventive detention after the constitutional challenges were resolved.

The GAO study was done before the *Salerno* decision. I would bet anything that detention is being used much more broadly and much less selectively now than it was before *Salerno,* when basically every case was a potential constitutional challenge.

For that reason, I think that in order for the subcommittee to make an informed decision about what is really happening, there is a need to look at what is happening now. Just the ball park statistic that I was able to get from our local pretrial services agency was a rate of detention without bond of 38 percent. That is significantly higher than the number in the GAO study.

I don't know whether that is typical or not, but I would suggest that things have changed since the *Salerno* decision and I would guess that a lot more people are being detained inappropriately now—I think that responds to Senator Specter's question—than they were before.

[The prepared statement of Mr. Reiser follows:]

TESTIMONY OF
DAVID A. REISER, STAFF ATTORNEY, PUBLIC DEFENDER SERVICE
OF THE DISTRICT OF COLUMBIA

before

THE SUBCOMITTEE ON THE CONSTITUTION
OF THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

June 16, 1989

Introduction

I am a staff attorney with the Public Defender Service for the District of Columbia ("PDS"). PDS is the agency created by Congress in the Court Reform and Criminal Procedure Act of 1970[1] to provide legal assistance to indigent persons charged with crimes in the local and federal courts of the District. D.C. Code Sections 1-2701, et seq. For several reasons, PDS provides a unique vantage point from which to assess the 1984 Bail Reform Act,[2] which is currently under review by the Subcommittee. First, Congress modeled the Act in many respects after the District of Columbia preventive detention law passed in 1970,[3] and heard extensive testimony concerning the experience of the District when it considered the 1984 Act. As attorneys for many persons detained under the pioneering District law, we at PDS have plentiful and longstanding experience with the practical workings and effects of preventive detention statutes. Second, the District actually has two quite different statutes which authorize detention on grounds of dangerousness. One of these, D.C. Code Section 23-1322, sets absolute time limits on the length of detention before trial. These cases are handled promptly, and detention is kept to a

---

[1] 84 Stat 644, Pub. L. 91-358 (1970).

[2] Pub. L. 98-473, Title II, Section 203(a), 98 Stat. 1976, codified at 18 U.S.C. Section 3142.

[3] D.C. Code Section 23-1322 (1981). The statute was amended in 1982 to permit an extension of the length of pretrial detention from 60 to 90 days upon a showing of good cause, but does not permit detention for longer than 90 days.

minimum. The other statute, D.C. Code Section 23-1325(a),[4] sets no limits on detention whatsover, and the result is months, even years of incarceration before trial. A comparison of these two statutes teaches important lessons about the relative merits of absolute limitations on detention as opposed to the elastic restrictions of the Speedy Trial Act. Third, we have also had the opportunity to observe the federal Bail Reform Act in operation in the United States District Court here, and to compare the way that this statute is administered with the administration of the local preventive detention law.[5] This collective experience with three different preventive detention laws establishes the foundation for the views I will express today.

Summary

---

[4] This statute applied only to capital cases. Since 1972, however, there have been no capital offenses in the District of Columbia. In 1982 the D.C. Council "revived" the statute to apply to the non-capital offense of first degree (including felony) murder, but did not incorporate any of the procedural safeguards of D.C. Code Section 23-1322 or the 1984 Bail Reform Act. D.C. Council, Committee on the Judiciary, Report on Bill 4-127 (June 28, 1982).

[5] I have actively participated in a number of legal challenges to aspects of preventive detention during my tenure at PDS. I was lead counsel in Montague v. United States, 522 A.2d 866 (D.C. 1987)(challenging detention for thirteen months under D.C. Code Section 23-1325(a)), and Lynch v. United States, ___ A.2d ___ Docket No. 87-870 (D.C. May 5, 1989)(holding that clear and convincing evidence is required for detention under D.C. Code Section 23-1325(a)). I was also a principal author of the PDS brief amicus curiae filed in United States v. Salerno, Docket No. 86-87. In addition, I have either represented or assisted in the representation of a number of PDS clients whom the government sought to detain under the 1984 Bail Reform Act. These cases include that of D.L., a pregnant eighteen year-old with no criminal record, whose story I relate below.

Briefly, I propose three modifications of the 1984 Act which are consistent with the purposes of the Act, and which will, I hope, eliminate some unintended consequences of the law as it is currently applied. First, I urge the Subcommittee to replace the flexible time limitations of the federal Speedy Trial Act[6] with absolute limits such as those which exist under D.C. Code Section 23-1322. Second, I urge the repeal of the portion of the Act which establishes a rebuttable presumption that a person indicted for a drug offense punishable by more than ten years imprisonment is likely to flee or be a danger to the community if released. Third, I urge the Subcomittee to take whatever legislative action is appropriate to invigorate the efforts of pretrial services agencies across the country to develop innovative conditional release plans which protect the community without detention.

I. The Need for Stringent Time Limits

From the beginning, strict time limits and preventive detention have been inseparable.[7] This nation's first experiement with preventive detention, D.C. Code Section 23-1322, established

---

[6] Pub. L. 93-619, 88 Stat. 2076, amended, Pub. L. 96-43, 93 Stat. 327, codified at 18 U.S.C. Sections 3161-3174.

[7] The Speedy Trial Act, as originally enacted in 1974, set a special inflexible deadline of 90 days to try defendants who were detained as well as special "high risk" defendants designated by the government. 18 U.S.C. Section 3164, amended Pub. L. 96-43 (1979). The reasoning behind this provision was that swifter trials would reduce the amount of time a potentially high risk defendant was free on bond, and thereby reduce the risk the defendant would commit a new crime before trial. See A. Partridge, ed., The Legislative History of Title I of the Speedy Trial Act of 1974 (1980) 243-53.

an absolute limit of 60 days for a preventively detained defendant to be tried or released. During the hearings on this legislation, Judge Hart, the chair of the federal Judicial Council Committee to Study the 1966 Bail Reform Act testified:

> [A]ssuming it is constitutional and assuming you pass it, just as sure as anything on earth, there has got to be a speedy trial. You cannot hold these people in jail forever. Morality won't permit it. The law won't permit it. Nothing will permit it, fair play, nothing.

Amendments to the Bail Reform Act of 1966: Hearings before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 91st Cong., 1st Sess. 28 (1969). Many other statements during the heariongs and debates echoed the conviction that detention must be accompanied by a speedy trial.* Likewise, the District of Columbia Court of Appeals, in upholding the constitutionality of the law, noted "[s]ignificantly, pretrial detention is closely circumscribed so as not to go beyond the need to protect the safety of the community pending the detainee's trial." United States v. Edwards, 430 A.2d 1321 (D.C. 1981) (en banc), cert. denied, 455 U.S. 1022 (1982). Other states which have passed preventive detention laws which permit detention solely on the basis of predicted danger to the community, as opposed to violations of probation or parole or conditions of release, have

---

* See, e.g., Statement of the Managers on the Part of the Senate Submitted Regarding Conference Action Upon S.2601, the President's Crime Legislation for the District of Columbia, 91st Con., 2d Sess. 31, 33 (1970); 116 Cong. Rec. S11236 (daily ed. July 14, 1970)(Sen. Tydings); 116 Cong. Rec. H6732 (daily ed. July 15, 1970)(Rep. Nelsen); 116 Cong. Rec. H6733 (Rep. Harsha); 116 Cong. Rec. 6737 (Rep. Hogan).

also adopted strict time limitations.'

When the Supreme Court considered the facial constitutionality of the 1984 Bail Reform Act in United States v. Salerno, 107 S.Ct. 2095, 2101 (1987), the Court did not directly address the length of Salerno's detention. It did, however, cite the ostensibly "stringent time limitations" of the federal Speedy Trial Act as one of the important procedural safeguards in the bail statute. At the oral argument in Salerno, the Solicitor General conceded that indefinite preventive detention would be unconstitutional.

Why is there such a consensus that speedy trials must accompany detention? Because the effect of a detention order is to incarcerate a person solely because he or she is believed to have committed a crime without a finding of guilt after a full jury trial. Detention inverts the criminal process; a detained defendant is treated, for all important practical purposes, as if he or she is guilty, until a jury decides otherwise. Obviously, if we "detained" people long enough, there would never be any need to try them for their alleged crimes. The courts have said that detention serves a legitimate regulatory purpose, and is therefore not punitive, but indefinite detention could supplant our process of jury trials based upon proof beyond a reasonable doubt with a system of judicial determinations based upon the lower standard of

---

' See Colo. Const. art. II, Section 19(c)(2) (90 days); Fla Stat. Ann. Section 907.041(i)(90 days); Wisc. Stat. 969.035(8) (60 days. Arizona, California and Virginia rely on their respective speedy trial provisions.

clear and convincing evidence."[10]

There is an inevitable tension between preventive imprisonment before trial and the presumption of innocence. Congress recognized this tension in the Bail Reform Act, by including Section 3142(j), which states, "[n]othing in this section shall be construed as modifying or limiting the presumption of innocence." And, of course, detention has no direct effect on a criminal defendant's right to the presumption at a trial.[11] But the presumption of innocence signifies more to our society than a jury instruction. It establishes a fundamental rule of conduct: we do not treat people as guilty until their guilt has been proved. This is the "presumption of innocence" in the broader sense, invoked in the recent agreements between U.S. and Soviet military leaders regarding accidental border crossings. There is a reason the presumption of innocence occupies an enduring place in our legal system. Preliminary judgments, like those made in detention hearings, are often wrong. When we act before all the facts are

---

[10] Laurence Tribe's citation to Through the Looking Glass remains apt. "The Queen observes that the King's messenger is "in prison now, being punished; and the trial doesn't even begin till next Wednesday; and of course the crime comes last of all." Tribe, An Ounce of Detention: Preventive Justice in the World of John Mitchell, 56 Va. L. Rev. 371, 374 (1970).

[11] I say no direct effect because it is well established that incarceration before trial dramatically increases the odds that a defendant will be convicted and imprisoned after trial. U.S. Dept. of Justice, Bureau of Justice Statistics, Pretrial Release and Misconduct 5 (1985); Wald, Pretrial Detention and Ultimate Freedom: A Statistical Study, 39 N.Y.U. L. Rev. 631 (1964); Ares, Rankin & Sturz, The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole, 38 N.Y.U. L. Rev. 67 (1963).

in, we may inflict irreparable injury on blameless members of the community. Trial victories are sometimes bittersweet, because there is no way to undo the harm that has been inflicted upon an incarcerated client in the months of waiting for trial.

The effect of preventive detention on the presumption of innocence hit home when I was arguing an appeal challenging the length of time a client had been detained before trial under D.C. Code Section 1325(a). One of the judges asked whether, since I was only challenging the length of detention, they had to assume that my client was guilty of the crime of which he had been accused, which provided the basis of the detention order. The correct answer, as a matter of appellate practice, was "yes." The factual basis of the original detention order was not at issue. But this meant that my client was treated, on the basis of a preliminary judicial determination, as if he was guilty until proven otherwise.[17] A speedy trial was therefore the only way he could be restored to his presumptively innocent state.

As it happened, the government's main witness at trial, who had consistently denied any involvement, admitted on cross examination that the murder weapon was his. He pleaded guilty to perjury and a lesser degree of murder during the middle of the trial. The jury found our client not guilty. Our client returned to his family after over thirteen months in jail for a crime -- my

---

[17] See generally Alschuler, Preventive Pretrial Detention and the Failure of Interest-Balancing Approaches to Due Process, 85 Mich. L. Rev. 510 (1987).

correct appellate answer notwithstanding -- that he did not commit."[1] Discussions of the benefits of preventive detention presume that everyone who is detained is guilty. Because that presumption is often wrong, preventive detention imposes enormous costs on those individuals who must wait until trial to regain their freedom. The longer they must wait, the graver the injustice.

The question now before this Subcommittee is whether the Speedy Trial Act serves to "closely circumscribe[] [detention] so as not to go beyond the need to protect the safety of the community pending the detainee's trial." Does the Act really impose "stringent time limitations," as the Supreme Court supposed? Experience under the Act shows that the answer is no.

The 1974 version of the Speedy Trial Act included a requirement that detained and "high risk" defendants be tried within 90 days. A defendant who was detained would be released after the 90th day. 18 U.S.C. Section 3164. In 1979, however, Congress amended that section to permit the exclusion of time from the 90 day period for the same reasons that time is excluded from the general time limitations of the Act. 18 U.S.C. Section

---

[1] Walsh, "Man Acquitted of D.C. Murder Charge After Friend's Midtrial Confession," Washington Post, March 28, 1987 C3. See also Walsh, "D.C. Murder Counts Dropped," Washington Post, Nov. 25, 1986 B2 (dismissal of charges after nearly two years of detention); Walsh, "Making Sense of a Chilling Mistake," Washington Post, April 17, 1987 B1 (dismissal of charges after over six months of preventive detention); Walsh, "D.C. Murder Suspects Face Long Pretrial Jailing," Washington Post, April 14, 1987 A1, 10 (several acquittals).

3161(h). This amendment, for all practical purposes, did away with the favored or expedited treatment of incarcerated defendants.

The exclusions under the Speedy Trial Act permit lengthy delays. They include all of the days a pretrial motion is pending in the trial court, whether or not the court is holding hearings or engaged in any activity whatsoever related to the motion. This can mean months of delay. See Henderson v. United States, 476 U.S. 321(1986). Time is also excluded for interlocutory government appeals.[14] United States v. Loud Hawk, 474 U.S. 302 (1986). Section 3161(h)(8) creates a reservoir of discretion to allow continuances "in the interest of justice." Moreover anything which excludes time for one codefendant, excludes time for all. 18 U.S.C. Section 3161(h)(7)(excluding undefined "reasonable period.") A motion filed by a codefendant at liberty may substantially delay the trial of a defendant who is preventively detained. The Act does not require the courts to treat exclusions differently for incarcerated defendants.

Because of the exclusions, the 90 day limit is illusory, and many defendants are held in pretrial detention for much longer than three months. For example, in United States v. Melendez-Carrion, 790 F.2d 984 (2d Cir.), cert. dism., 107 S.Ct. 562 (1986), eight defendants had been held for more than eight months at the time the Court of Appeals reached its decision. Those held only on the

---

[14] Ironically, filing a bond review motion, or an appeal from a detention order, stops the speedy trial clock. See, e.g., United States v. Leon, 614 F.Supp. 156 (S.D.N.Y 1985).

basis of dangerousness to the community were released seven months later, United States v. Gonzales-Claudio, 806 F.2d 334 (2d Cir. 1987), but other remained incarcerated nineteen months after their initial imprisonment. See United States v. Melendez-Carrion, 820 F.2d 56, 59 (2d Cir. 1987). Melendez-Carrion is hardly an isolated example. See also United States v. Acceturo, 623 F.Supp. 746 (D.N.J. 1985), remanded 783 F.2d 382 (3d Cir. 1986)(16 months); United States v. Jackson, 823 F.2d 4, 7 (2d Cir. 1987)(forseeing detention for over 8 months); United States v. Walker, No. 86-113M AMT (C.D. Ca. Sept. 22, 1986)(surveying length of detention in the Central District), reversed on other grounds, 808 F.2d 1309 (9th Cir. 1986); United States v. Frisone, 795 F.2d 1 (2d Cir. 1986)(12 months); United States v. Colombo, 777 F.2d 96, 100-101 (2d Cir. 1985)(warning that Speedy Trial Act "might not 'work perfectly well to protect against lengthy incarceration.")

In general, the courts have read the Speedy Trial Act narrowly, and the exclusions broadly. The result is that the Act does not provide stringent and effective limitations on the length of preventive detention. That effective limits are practicable, and preferable to the elastic boundaries of the Speedy Trial Act, is illustrated by our experience in the Superior Court of the District of Columbia.

It is no secret that, like many urban court systems, there is a substantial backlog of cases in the D.C. Superior Court. Congress excluded the District of Columbia from the federal Speedy

Trial Act."[15] Consequently, the only limitations on the length of time a defendant may be imprisoned pending trial are those imposed by the Sixth Amendment. The District of Columbia Court of Appeals has upheld detention for over two years against constitutional challenge. Graves v. United States, 490 A.2d 1086 (D.C. 1984) (en banc). Despite this systemic backlog, the cases of defendants detained under the 1970 preventive detention law are tried swiftly, within the statutory deadlines. These cases are assigned to special "accelerated felony trial calendars." The government also uses these calendars in order to assure speedy trials of "high risk" defendants who are not detained. Because the statutory deadlines are absolute and because they are enforced, preventively detained defendants receive speedy trials.

By contrast, defendants who are detained under the other local preeventive detention statute, D.C. Code Section 23-1325(a), wait nine months or longer before indictment,[16] and even longer for trial. The statute itself does not impose any time limits, and these cases do not receive expedited treatment.

What this comparison proves is that preventive detention, like

---

[15] See H.R. Rep. 93-1508, 93d Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Admin. News 7401, 7443.

[16] If more than nine months pass without an indictment, the prosecution is deemed abandoned, and the complaint is dismissed, with the effect that an incarcerated defendant must be released. Superior Court Criminal Rule 48(c). See D.C. Code Section 23-102. Such dismissal does not preclude rearrest and imprisonment once a grand jury does return an indictment. The government has conceded that cases may also be dismissed for "unnecessary delay," under Superior Court Criminal Rule 48(b), but the courts have never applied this authority.

work, fills the time allotted to it. When the Office of the United States Attorney must try cases, it does so. When the court does not force the prosecution's hand, it is generally satisfied with the status quo. After all, the defendant is in prison, the same place he or she would be if the government proved its case at trial.

"Stringent time limitations" are practical. They are desperately needed to carry out the purpose of the 1984 Bail Reform Act, which was to permit preventive detentionin a manner consistent with morality and the Constitution."

II. The Unfairness of the Rebuttable Presumption

The twofold purpose of the preventive detention provisions of the 1984 Bail Reform Act was to protect the community from a "small but identifiable group of particularly dangerous defendants," S. Rep. 98-225, 98th Cong., 1st Sess. 6 (1983) and to make the bail process more honest by doing away with sub rosa preventive detention. S. Rep. 98-225 at 9. Although authorizing detention for this "limited group," S. Rep. 98-225 at 6-7, Congress "anticipated that [pretrial release] will continue to be appropriate for the majority of Federal defendants." Id. at 12. The Solicitor General described detention as "a last resort." Brief of the United States, United States v. Salerno, No. 86-87

" I do not subscribe to the belief that preventive detention is right or constitutional. Despite my reservations about all preventive detention, I see a substantial difference between detention that is "closely circumscribed," and detention than can last for years.

at 38.

Congress focused special attention on major drug traffickers.

> It is well known that drug trafficking is carried on to an unusual degree by persons engaged in continuing patterns of criminal activity. Persons charged with major drug felonies are often in the business of importing or distributing dangerous drugs, and thus because of the nature of the criminal activity with which they are charged, they pose a significant risk of pretrial recidivism.

S. Rep. 98-225 at 20. For this reason, Congress enacted a rebuttable presumption that any person charged with a drug offense punishable by more than ten years imprisonment is a danger to the community. Although the standard of proof of dangerousness in the statute is "clear and convincing evidence," 18 U.S.C. Section 3142(f), the law presumes this entire category of defendants dangerous based upon a showing of probable cause: just enough evidence to permit an arrest or an indictment.

Most courts have concluded that it would be unconstitutional to interpret the rebuttable presumption as shifting the burden of persuasion to the accused. Nevertheless, the courts have allowed the presumption to remain "a factor" to be weighed by the court in deciding whether to order detention. See, e.g., United States v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985); United States v. Martir, 782 F.2d 1141 (2d Cir. 1986); United States v. Alatishe, 768 F.2d 364, 371 (D.C. Cir. 1985). This "factor" significantly reduces the government's burden, and makes it easier to detain those persons to whom the presumption applies.

It may sound as if the presumption has achieved its purpose.

But the reality is that many of those caught in the rebuttable presumption net are minnows, not sharks. Congress "intended that continued drug trafficking constitutes a danger to the community .... But it does not logically follow that all persons charged with drug offenses are therefore dangerous. While it is axiomatic that a drug kingpin is a danger to the community, it is not necessarily the case that his couriers or first time dealers are." United States v. Cox, 635 F.Supp. 1047, 1055-56 (D. Kan. 1986). The presumption applies to a large class of drug offenders which includes major traffickers of the Carlos Lehder variety, and "mules" with no criminal record alike. The presumption is simply unnecessary in the cases in which detention is appropriate. It should be easy to prove, if someone is a major trafficker, that release would endanger the community. On the other hand, minor figures in drug cases are often drug addicts victimized by dealers. These minor figures play the roles which are most exposed to detection and arrest. But they do not present the special dangers of pretrial recidivism discussed in the Senate report.

The statutory presumption appears to make it significantly easier to preventively detain minor drug offenders than defendants accused of other, equally serious offenses. A General Accounting Office Study published in 1987 reported that judicial officers detained 61% of defendants to whom the statutory rebuttable presumptions applied and whom the prosecutor asked to be detained. GAO, Criminal Bail: How Bail Reform is Working in Selected District Courts 30-31 (1987). This study was conducted before the Salerno

decision. I expect that both the number of detention requests and the rate of detention have increased since that time, as they did in the District of Columbia after the first constitutional challenge to the local detention law was resolved. The D.C. Pretrial Services Agency has advised me that 370 persons were ordered held without bond in United States District Court in 1988, out of a total of 958 defendants interviewed. Pretrial Services, a court agency, recommended detention hearings in only 276 cases. Of the 370 detainees, 264 were charged with drug offenses. I am confident that further study would show that few detainees were major traffickers or kingpins."[*] Better data is needed to reach firm statistical conclusions, but I think that data will show that the presumption has made it far too easy to detain persons charged with drug offenses. Nor is it enough to say that drug offenses are serious crimes. They are. But the issue in a detention hearing is not simply what someone has been accused of doing in the past, but whether any conditions of release can prevent new law violations before trial.

I do not have statistics that tell the whole story, but I do have a story which I think demonstrates what is wrong with the

---

[*] The data is based on materials provided to me by John L. Carver, Director, D.C. Pretrial Services Agency, and Rhoda Reid-Winston Deputy Director, for purposes of this hearing. My conclusion that few of the drug defendants detained are "kingpins" is based upon my subjective assessment of the kinds of drug cases brought in the District Court.

presumption. Our client, I will call her D.L.,[19] was arrested on Friday December 30, 1988. On the following day, she was presented in Superior Court and charged with possession of cocaine with the intent to distribute. A Superior Court judge set a $1000 surety bond, and scheduled the case for further proceedings in United States District Court on January 3. D.L.'s family was unable to post bond because the courts were closed for the New Year's holiday. On January 4, a United States magistrate ordered D.L. held without bond pending trial.

D.L. was a pregnant eighteen year old girl with no criminal or juvenile record. She went into labor moments after she was arrested, and she delivered a six pound boy on New Year's Day in a prison ward at D.C. General Hospital. The only evidence implicating her in drug dealing was that she was found by police asleep in a room in an apartment that was plainly used as a crack house. There was no evidence that anyone had ever seen her distributing drugs. It was not her apartment. The testimony of the police officer at the detention hearing etched a dismaying portrait of a young girl, dependent on crack, who had collapsed, exhausted and pregnant. D.L. lived with her parents, and was scheduled to return to school once her baby was born. Her parents both work, her mother as a housekeeper, and her father for the circulation department of the Washington Post. Neither parent had

---

[19] The case is a matter of public record. Out of respect for my client's privacy, however, I will refer her to by her initials. Case No. 89-0001M-01 (D.D.C. detention order filed January 4, 1989, reversed by District Judge, January 6, 1989)

ever been arrested. It is inconceivable that D.L. is the kind of person Congress was thinking of when it described a "small but identifiable group of particularly dangerous defendants." Had it not been for the rebuttable presumption, it is equally inconceivable that she would have been detained.

The story has a happy ending. The Chief Judge reviwed the magistrate's detention order, and released D.L. to her parents. The government, which never had any evidence that D.L. possessed any of the cocaine found in the apartment, dismissed the case later on. But the detention order never should have been entered. The law should be changed to keep this from happening again.

III. The Need for Less Restrictive Alternatives

An integral part of the detention scheme was that "[p]retrial detention thus can be considered only as a last resort." Indeed, one of the advantages of making release decision focus explicitly on the possibility of danger to the community is to enable the court to fashion conditions of release that protect the community without incarcerating the defendant. The old practice of sub rosa detention was inflexible. A judge could set a bond that was too high for the defendant to meet, and incarcerate him or her. But there was no alternative to incarceration. The 1984 Act speaks of a determination whether "no combination of conditions will reasonably assure the safety of the community." Even a person with a predilection for lawbreaking must therefore be released if conditions can be fashioned to prevent further lawbreaking.

Salerno may illustrate a case in which there were no

alternatives to detention. The district court rejected a proposal for "house arrest" because there was evidence that Salerno could order an execution with a single word. But Salerno is the exception, not the rule. In many cases, intensive and creative pretrial supervision will provide the assurance the community needs, while allowing the defendant the opportunity to continue employment, to assist counsel, and to remain with his or her family pending trial. In the District of Columbia we have two innovative programs for high risk defendants. One, "Operation Progress," allows electronic monitoring of the defendant through a wristlet connected to a telephone monitoring device which alerts supervisors if the defendant goes more than a given distance from the phone. The second program, Intensive Third Party Custody, combines a halfway house orientation program, employment training, drug testing, and extremely close supervision. Both programs are well respected and effective.

These programs illustrate a small part of the range of options which could be made available to judges seeking to carry out the objectives of the Act. Unfortunately, in most federal districts, there are few innovative programs or alternatives to incarceration. Wagner, Limiting Preventive Detention Through Conditional Release: The Unfulfilled Promise of the 1982 Pretrial Services Act, 97 Yale L.J. 320 (1987). Detention rates will remain higher than they need to be to achieve the purposes of the Act so long as the range of options is limited. For example, there is a desperate need for more facilities to provide drug treatment, especially to crack

cocaine addicts. These facilities could form an important part of a pretrial release plan. I urge the Subcommittee to take action to make the array of conditions contemplated in the bail statute a reality.

Senator SIMON. If I could just ask you—and unfortunately I am going to have to adjourn the hearing right away. I would be interested in getting from you, Mr. Reiser, specific suggestions—and maybe this is in your written testimony—on how we ought to be changing the law, if we ought to be changing the law, OK?

Mr. REISER. Certainly, and I would be happy to—if I think of anything else, I will—if I can write a letter, I would be happy to do that.

Senator SIMON. And, Mr. Jones, when will we get the final report here?

Mr. JONES. Well, as you know, Mr. Chairman, it will be issued to the requesting chairman, and as soon as he releases it we will get it to you.

Senator SIMON. Yes.

Mr. JONES. But that didn't answer your direct question. When are we going to get the report, gentlemen? Early in September.

Senator SIMON. OK.

Mr. JONES. You asked one question, Mr. Chairman, and I was disingenuous in answering; I was just in ignorance. For those people who appeal their conviction or their sentence, over 90 percent of them were in custody, and that is what you were asking.

Senator SIMON. And is this broken down into crimes of violence or drug trafficking?

Mr. JONES. No, but what I can do is, for the record, we can get with your staff and give as good a breakdown as we can. We know what we can and we can massage the data as best we can and supply it for the record.

Senator SIMON. OK, all right.

[The information of Mr. Jones follows:]

GAO
United States
General Accounting Office
Washington, D.C. 20548

General Government Division

JUN 25 1989

The Honorable Paul Simon
Chairman, Subcommittee on the
Constitution
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

This is in response to your June 23, 1989, letter asking for post-conviction bail statistics we discussed at the recent hearings on the Bail Reform Act of 1984. As you will recall from the hearings, we are developing these statistics in response to a request from the Chairman, House Subcommittee on Courts, Intellectual Property, and the Administration of Justice. Until such time as we issue the report to the Subcommittee, our statistics should be considered preliminary. We expect to issue our report to the Subcommittee in September 1989.

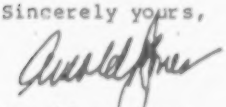
The Bail Reform Act of 1984, which replaced the Bail Reform Act of 1966, changed the basic presumptions to be used by judicial officers when considering release for convicted offenders pending imposition or execution of sentences or resolution of their appeals. We analyzed a sample of cases in four judicial districts -- northern Indiana, Arizona, southern Florida and eastern New York -- for a six month period (January to June 1984) under the old law and a six month period (January to June 1986) under the new law. We estimate that about 31 percent and 39 percent of those persons found guilty were kept in custody while awaiting imposition of sentence under the old and new laws, respectively. Furthermore, offenders who were in custody during the entire pretrial period were kept in custody while awaiting imposition of sentence under both laws -- 99 percent and 97 percent under the old and new laws, respectively.

During the hearings, we also discussed persons kept in custody during the appeals process. The 1984 bail law directs judicial officers to keep appellants in custody unless (1)there is clear and convincing evidence that these appellants are not likely to flee or pose a danger to any individual or the community and (2)the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.

We were concerned that our sample described above would not produce a sufficient number of appeals for us to reliably project custody rates. Therefore, we analyzed court records for all criminal cases which commenced in 1986 in the four districts where the person was convicted and sentenced to incarceration and where the conviction and/or sentence was appealed. Of the 511 persons who appealed their convictions and/or prison sentences, 460 (90 percent) were in custody while their appeals were being processed.

I appreciated the opportunity to share GAO's views on the impact of the Bail Reform Act of 1984 at the Subcommittee hearings. I hope the information I have provided will contribute to a better understanding of the impacts of the new law.

Sincerely yours,



Arnold P. Jones
Director, Administration
of Justice Issues

Senator SIMON. Mr. Reiser, what about the idea of, once convicted, staying in prison for a serious drug offense, and how would you define a serious drug offense?

Mr. REISER. I would define a serious drug offense much more narrowly than Congress has in the rebuttable presumptions. I think I agree with Judge Newman about this. I would be astonished if there were five people whom we would call major drug traffickers who were released after a conviction in the entire country since the statute was passed.

I don't have any quarrel with the basic change that Congress made, which was to make the standard for pretrial release different from the standard for release after trial. I think that makes perfect sense. If anything, it reinforces the idea of the presumption of innocence.

But I do agree with Judge Newman that in the very, very rare case where a Federal district judge would actually let somebody out in a drug offense after conviction and the U.S. Court of Appeals would affirm that decision, because presumably if the Government was unhappy about it, they would appeal—in that very rare case, I have a feeling that the circumstances would be such that we wouldn't want to take that power away absolutely.

Certainly, if Congress were thinking about making an absolute rule for drug cases, I would suggest making that absolute rule apply to a much narrower group than the rebuttable presumptions apply to.

Rather than the category being anybody who is charged with an offense that is punishable by a maximum sentence of 10 years, perhaps you could make it anyone to whom the mandatory minimum 10-year sentence would apply because, as I am sure you know, there is a graduated scale of penalties and the more drugs involved, the greater the penalty.

The 10-year mandatory minimum only applies to fairly large-scale drug-dealing. I would have much less quarrel if both the rebuttable presumption and whatever kind of change might be made after conviction were tailored to those large drug traffickers so that we could really exclude the dime bag.

Senator SIMON. OK. Thank you very much.

Our hearing stands adjourned.

[Whereupon, at 12:25 p.m., the subcommittee was adjourned.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

PROFESSIONAL BAIL AGENTS
OF THE
UNITED STATES

OFFICERS
Executive Director
GERALD P. MONKS, Ph.D., CBA
Houston, Texas
President
CELES KING, III, CBA
Los Angeles, California
(213) 299-1234
Executive Vice-President
NICK POTSOS, CBA
St. Louis, Missouri
Vice-President
ARMANDO ROCHE, CBA
Tampa, Florida
Vice-President, International
BILL G. HUNTER
Fresno, California
Secretary
HELEN TAPP
Phoenix, Arizona
Treasurer
THERESSA ELAM-CLARKE
Oakland, California
DIRECTORS
ANDY MORENO
Visalia, California
RONALD OLSZOWY
Clifton, New Jersey
DONNA MATCHETT
N. Little Rock, Arkansas
President, West Coast
MARVIN B. BYRON
Los Angeles, California
Vice-President, West Coast
ARTHUR E. LEE
Honolulu, Hawaii
President, Midwest
RONNIE D. LONG
Ft. Worth, Texas
Vice-President, Midwest
JOYCE CARLSON, CBA
Indianapolis, Indiana
President, East Coast
LINDA CHILDS
Washington, D.C.
Vice-President, East Coast
CATHY JOYCE
Atlanta, Georgia
President, Recovery
W. MAURICE JONES
Las Vegas, Nevada
(702) 362-5354
Vice-Presidents, Recovery
PEPPER CROWDER
ED MARTINEZ
President's Council
BUFFY OSTI, CBA
GLENN STRICKLAND
COMMITTEES
Legislative
GENE BUTLER
BILL O'HALLORAN
GARY WILLIAMS
Peace Officer Liason
JO BETNCOURT
CARROLL STEWART
Education
ESTHER GREEN
ROGERS HORNSBY
COUNSEL
General Counsel
MONKS, MONKS & MONKS
Legislative Counselor
ATTY. ALAN S. TOPPELBERG
Political Consultants
HENRY SHEINKOPF-N.Y.
SID GUZETTA-D.C.
Public Affairs
BARBARA D. LANGHAM, Ph. D., APR

STATEMENT OF

GERALD P. MONKS PH.D, CBA
EXECUTIVE DIRECTOR, PROFESSIONAL BAIL AGENTS OF THE U.S.

BEFORE

THE SUBCOMMITTEE ON THE CONSTITUTION
OF THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

JUNE 16, 1989

NATIONAL OFFICE 4660 Beechnut, Suite 213 ☆ Houston, Texas 77096 ☆ (713) 661-7472 ☆ Fax (713) 661-5302
CALIFORNIA 1530 W. Martin Luther King ☆ Los Angeles, Ca. 90062 ☆ (213) 299-1234 ☆ Fax (213) 290 KFAX
WASHINGTON, D.C. 400 5th St. N.W. ☆ Washington, D.C. 20001 ☆ (202) 347-1110

Mr. Chairman, it is an honor and priviledge to present to you and the other distinguished members of the subcommittee on the Constitution, our comments, opinions, and recommendations on the Bail Reform Act of 1984. I am the Executive Director of the Professional Bail Agents of the United States. Our Association represents 98% of the Professional Bail Agents in the United States. We represent the free enterprise consumer voting marketing system of pre-trial. We proficiently supervise criminal defendants in forty-five states and the federal system at no cost to the taxpayers with an outstanding fugitive rate of less than 2%. The criminals will assure you we are invincible in pre-trial knowledge and effectiveness.

The brave Professional Bail Agents of the United States supervise carefully criminal defendants until they go to court. If the criminal defendant fails to appear in court, we vigorously pursue him/her until he/she is captured and re-arrested.

The reason for our success is individual accountability and responsibility. No judge, peace officer, prosecutor, or pre-trial release agency is required to endure the pain, anguish, fear of failure and/or disaster we might suffer. We have to succeed! Ours is not just a job, it is an adventure of survival. Bonded supervision is the answer to crime control, tax control, and self control in the pre-trial area of the criminal justice system.

No one has the pragmatic experience in the federal and state pre-trial systems than we do. Our research is superior and more extensive than any presented to this committee. While others research hundreds, we research thousands. Many of our members have over thirty years of experience in the pre-trial criminal justice system.

In a most altruistic manner, we supported the Bail Reform Act of 1984. We could not believe the unpracticed federal judges would misread the intent of the distinguished members of Congress. We anticipated the federal magistrates would act like the judges of California and Arizona requiring approximately 3% of criminal defendants to be held in pre-trial detention because of danger to the community, and using risk of fleeing as a pre-trial detention reason for only substantial drug dealers. The law has given the unpracticed federal judiciary too much authority and too little pre-trial leadership.

In my expert opinion, the California Bail Law could be used as an example for all states and the federal system. California pre-trial laws allow free enterprise to operate properly, and crime is controlled with less taxpayer expense than any other state in the United States or in the federal system.

The primary difference between the federal pre-trial system and a state pre-trial system is formality. The federal system costs ten times as much as a state system for the same end product.

The present 1984 law can easily be amended to reflect the benefits that are needed to control drugs and still protect the 8th Amendment. Below are examples of four cases I worked on. Three of these cases illustrate failure in the federal system, one represents success:

Case 1 - In this case, the defendant was a primarily prominant businessman in his community. He was charged in a large real estate scam. When he heard of the charges, he flew back from London at his own expense to accept his indictment. He was held in pre-trial detention for six weeks without bond with reason being that he was a "risk to flee." Finally, bail was set at $500,000, cash or surety bond by the district court judge. The defendant's money was so depleted by this time that he could not afford to make the bond. Eight months later, this defendant committed suicide in the county jail while awaiting trial. Both the federal magistrate and the district judge had no criminal experience in pre-trial, they had only civil training. My opinion of twenty years experience is that he could have been released on a $50,000 cash or surety bond and he would have appeared in court or I could have easily located and re-arrested him. This case was a failure in the federal system.

Case 2 - A Los Angeles bail agent called me complaining that a friend of his had a sister in a federal detention center in Kansas City. She had been charged with credit card abuse and was being held without bond. I called the pre-trial

release center in Kansas City to find out the reason for this injustice. It seems the male she was with had been guilty of serious credit card scams in the past and was a "danger to flee" and no bond was set for him; therefore, because she was associated with this man, no bond was set for her either. This was an outrageaous misuse of detention. Her family was ready to put up their house to guarantee her appearance in court. Her "risk of fleeing" was minimal. This case was a failure in the federal system.

Case 3 - Recently I was called as an expert witness for a forgery case involving a 57-year old man. He was charged by both the state and federal systems, and the counts were similar. Bail was set at $2000 cash or surety by one of the toughest state judges in Harris County, Texas. At the same time, the federal magistrate set cash or surety bond at $25,000. The defendant spent five weeks incarcerated before a hearing to reduce the federal bond was alloved. When the magistrate finally heard evidence and learned that I was to testify, she reduced the bond to a $20,000 personal recognizance bond. In this case, the government would have been better off issuing a $2000 surety bond that would cost the defendant $200 and the taxpayers nothing if he failed to appear in court. I consider this case a failure as well in the federal system.

Case 4 - The local federal officers arrested a "so-called" drug dealer in Harris County in 1988. The newspapers said he was the biggest drug dealer in the county. He was held

in pre-trial detention and finally bail was set at $500,000 cash or surety. With my persuasion, after another court hearing he was given a 10% cash or surety option. I agreed to make his $50,000 surety bond for a $5,000 fee. It took this alleged drug dealer eight days to raise the fee amount. A real substantial drug dealer could easily raise $5,000 in one day, but the truth is that this defendant was a loud-mouthed braggert. His wife finally had to mortgage their car to obtain the money. The Pre-trial Release Agency supervised him on a $450,000 personal recognizance bond and I supervised him on a $50,000 surety bond. He never missed a court date and is nov doing time in the Federal Penitentiary. I believe he was sentenced to five years. He had adequate supervision and defense. The taxpayers saved money, his 8th Amendment rights were protected, and this case can be considered a success for the federal system.

Events are developing which will make the members of our Association heroes to the criminal justice system in the 90's because of individual accountability and responsibility, knowledge, techniques, and minimal costs to the taxpayer. No one in the world can accomplish this critical task but us.

With this in mind I suggest the following amended changes in the federal law:

1. Any time a judge allows a cash deposit on a bail bond, a surety bail bond must be allowed of exactly the same amount as the cash deposit required, and the judge should be given the right to require surety only.

2. Professional bail agents as an incentive to keep up the search for a defendant, should be guaranteed a time of at least six months after the defendant fails to appear in court before having to pay off the forfeiture. Also, a Bill of Review should be allowed for two years. Bail bonds are similar to performance bonds.

3. The bail bond should be exonerated with a finding of guilt or dismissal. The bail bond only guarantees appearances, not conduct. The bail bond cannot be forfeited because the defendant commits another crime.

4. Danger of fleeing should be eliminated from the federal bill as a reason to allow judges to keep defendants in jail without bond, unless it is a substantial drug crime. This is the purpose of bail.

Enclosed are some excerpts that may be of value to you and the committee.

Sincerely,

Gerald P. Monks, Ph.D. CBA
Executive Director

STATEMENT

OF

GERALD P. MONKS, PH.D. CBA
EXECUTIVE DIRECTOR
PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

TO

THE

COMMITTEE ON THE JUDICIARY
UNITED STATE SENATE
SUBCOMMITTEE ON CONSTITUTION

CONCERNING

OVERSIGHT OF BAIL REFORM ACT OF 1984

ON

JUNE 16, 1989

PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

OFFICERS
Executive Director
GERALD P. MONKS, Ph.D., CBA
Houston, Texas
President
CELES KING, III, CBA
Los Angeles, California
(213) 299-1234
Executive Vice-President
HACK POTSOS, CBA
St. Louis, Missouri
Vice-President
ARMANDO ROCHE, CBA
Tampa, Florida
Vice-President, International
BILL G. HUNTER
Fresno, California
Secretary
HELEN TAPP
Phoenix, Arizona
Treasurer
THERESSA ELAM-CLARKE
Oakland, California
DIRECTORS
ANDY MORENO
Visalia, California
RONALD OLSZOWKI
Clifton, New Jersey
DONNA MATCHETT
N. Little Rock, Arkansas
President, West Coast
MARVIN B. BYRON
Los Angeles, California
Vice-President, West Coast
ARTHUR E. LEE
Honolulu, Hawaii
President, Midwest
RONNIE D. LONG
Ft. Worth, Texas
Vice-President, Midwest
JOYCE CARLSON, CBA
Indianapolis, Indiana
President, East Coast
LINDA CHILDS
Washington, D.C.
Vice-President, East Coast
CATHY JOYCE
Atlanta, Georgia
President, Recovery
W. MAURICE JONES
Las Vegas, Nevada
(702) 362-5354
Vice-Presidents, Recovery
PEPPER CROWDER
ED MARTINEZ
President's Council
BUFFY OSTI, CBA
GLENN STRICKLAND
COMMITTEES
Legislative
GENE BUTLER
BILL O'HALLORAN
GARY WILLIAMS
Peace Officer Liason
JO BETNCOURT
CARROLL STEWART
Education
ESTHER GREEN
ROGERS HORNSBY
COUNSEL
General Counsel
MONKS, MONKS & MONKS
Legislative Counselor
ATTY. ALAN S. TOPPELBERG
Political Consultants
HENRY SHEINKOPF-N.Y.
SID GUZETTA-D.C.
Public Affairs
BARBARA D. LANGHAM, Ph. D., APR

June 16, 1989
Date

LEGISLATIVE RECOMMENDATION

The needs of the consumer-voting, free enterprise professional bail agents and the changes which should be made in the federal pre-trial system to save the taxpayers money and protect the 8th amendment rights of our citizens, and help fight crime and drug problems in the community.

1. Any time a judge allows a cash deposit on a bail bond, a surety bail bond must be allowed of exactly the same amount as the cash deposit required, and the judge should be given the right to require surety only.

2. Professional Bail Agents as an incentive to keep up the search for a defendant, should be guaranteed a time of at least six months after the defendant fails to appear in court before having to pay off the forfeiture. Also, a Bill of Review should be allowed for two years. Bail bonds are similar to performance bonds.

3. The bail bond should be exonerated with a finding of guilt or dismissal. The bail bond only guarantees appearances, not conduct. The bail bond cannot be forfeited because the defendant commits another crime.

4. Danger of fleeing should be eliminated from the federal bill as a reason to allow judges to keep defendants in jail without bond. This is the reason of bail!

5. Pre-Trial Release Agencies should be eliminated unless they are designated to help only the poor.

Sincerely,

Gerald P. Monks, Ph.D. CBA
Executive Director

The enclosed research will reinforce these recommendations.

NATIONAL OFFICE 4660 Beechnut, Suite 213 ★ Houston, Texas 77096 ★ (713) 661-7472 ★ Fax (713) 661-5302
CALIFORNIA 1530 W. Martin Luther King ★ Los Angeles, Ca. 90062 ★ (213) 299-1234 ★ Fax (213) 290 KFAX
WASHINGTON, D.C. 400 5th St. N.W. ★ Washington, D.C. 20001 ★ (202) 347-1110

PUBLIC BAIL–A NATIONAL DISASTER?

by Gerald P. Monks

Bail is designed to guarantee the appearance of a criminal defendant in court at a time the court directs. The bail bond is a surety bond and is not designed to cover fines, attorney fees, court costs, or other extraordinary expenses. It is designed to protect the taxpayer from loss in the event a criminal defendant does not appear in court when the court is ready to try the case. More importantly and essentially, bail is designed to guarantee a defendant will be brought back to court so the case can be tried. The criminal justice system fails if, when a case has come before the court, the prosecutor is ready to try the case, the witnesses have left their jobs in order to testify, the judge is on the bench, the jury has been seated, the prosecutor is ready to make his motions, as is the defense—and no defendant is available to be tried! When this happens—as it does too many times in our country—the real cost is borne by the victim taxpayer. The above scenario occurs most frequently when public bail is used in a jurisdiction instead of the free enterprise private bail agents.

Our forefathers formed the unique American system, among other reasons, to receive the benefits of due process and law. They designed a system which assumed accused persons are innocent until proven guilty. The system was and is designed to make sure when accused are arrested that the arrest itself is not tantamount to a guilty verdict. Lack of bail in "due process" makes arrest almost a finding of guilt. Provisions for due process and reasonable bail for each of the citizens of the United States have been guaranteed to our citizens by the Fifth and Eighth amendments.

PUBLIC BAIL EXPLAINED

In the present era, bail has developed into several different forms, but essentially bail bonds given in the United States are either public bail or private bail. Public bail, generally known as the personal recognizance (p.r.) or release on recognizance bonds, allows the judge to say to the defendant, "I know you have been charged with

a crime, however, I will trust you to come back when it is necessary to go to trial, and if you do not, I expect you to pay a certain forfeiture amount, for example, $10,000.00." Pre-trial research is very limited, yet this form of public bail comprises nearly half of the people in jail today. Personal recognizance bonds in some states and areas are given by judges, sheriffs, and others who are responsible and accountable, yet in some jurisdictions those granting p.r. bonds are not at all responsible to the public. For certain offenses, personal recognizance bonds are given by bail commissioners.

A second type of public bail bond given is the limited deposit bail bond. In this case, the judge says to the defendant, "You must put up ten percent of the bond to show good faith that you will come to court. If you do come to court, you will get ninety percent back of what you put up and ten percent will be charged as a service fee." Therefore, on a $10,000 bond the criminal defendant will put up $1,000. If he comes to court on time, the case will be disposed of, and he will get back $900. If he fails to show up for court, he will lose the ten percent, and allegedly he can be sued for the other ninety percent. This type of bond can either be a judicial option or a defendant option, depending on the jurisdiction. In some states, the judges have the right to determine whether or not this type of bond will be available to the incarcerated party. In other states and jurisdictions, the defendant must *always* be offered the option of the ten percent. In "defendant option" states, the judge has really lost his ability to make bond determinations and only can set the *amount* of the bail bond.

PRIVATE BAIL EXPLAINED

Private bail bonds also follow two general models. First are bonds for which the defendant puts up cash to guarantee his appearance. When he shows up for court, the cash is returned to him. The second type of private bond is one which uses commercial bail bonds handled by commercial bail bond agents. In this instance the bail bond agents use surety companies to guarantee to the state that they will pay the bond forfeiture. Alternatively, property owned by the bail agent is pledged to guarantee the defendant will show up for court as agreed. If the defendant does not show up for court, the bail agent will go get him and bring him to court. For this service the defendant is charged a premium. In the commercial bail bond case, if a defendant fails to appear, the commercial bail agent knows he

may have to pay—thus he has the incentive to go out and either rearrest, or talk the defendant back to court.

DISCUSSION OF THE COMPETING MODELS

Theoretically, the good points of a p.r. bond (also sometimes known as o.r. for "own recognizance") are that it will allow the judge to offer the indigent an opportunity to get out of jail without expense. It requires only the payment of the bond forfeiture by the indigent person if he does not show up. The payment of the forfeiture is a quixotic thought at its best. According to the American Criminal Justice Research Institute, there is no evidence that shows this bond has ever "paid off" anywhere in the United States of America. ("Paid off" is a term used for collection of bond forfeitures). This personal recognizance bond also could be used for prominent people in the community who are well known and who may have little reason to leave the community. Local elected judges, however, found that high failure to appear rates cause a great deal of criticism, particularly during election year. Therefore, some local governments developed, or worked for the development of, the pre-trial release agency's "direct release and monitor" system.

Personal recognizance bonds are designed to get the criminal defendant to take some quasi-responsibility for his failure or success. In practice, however, pre-trial release agencies in many areas, we have found, are headed by lawyers who, for all practical purposes, believe that everyone will just naturally show up for court trial. In spite of determined efforts and their attempts to sophisticate these systems, "failure to appear" rates have never dropped much below twenty percent for misdemeanor bonds and fifteen percent for felony bonds.[1] To offer an illustration of how such p.r. systems can grow, just like other government bureaucracies, the Washington D.C. pre-trial bail agency started out in 1967 with a budget of $75,000 and a staff of four. In 1981, they had a $1,100,000 budget with a staff of over sixty-one.[2] The cost for personal recognizance bonds utilizing pre-trial release agencies has been estimated at $356 per release.[1] This has produced a substantial cost to the victims, the taxpayers, and a substantial relief to criminals! In addition, the pre-trial release agencies do not address the indigency problem, nor have they ever proven that they reduce the jail population.

Some of us involved in the criminal justice system argue that pre-trial release agencies have actually become criminal welfare agencies,

with lots of benefits and entitlements for criminals but little benefit to taxpayers. The pre-trial personal recognizance bond provides no one to monitor or watch the criminal defendant while out on bail, and relies solely upon the overworked police forces as those who will somehow bring the defendant back to justice and incarcerate them. It is estimated that ninety percent of the people incarcerated are found guilty.[4] While only four percent of those go to long term sentencing, the rest theoretically are subject to substantial fines or probation, which reduces the cost to the victims and taxpayers.[5] The personal recognizance program, while once intended for the indigent, may actually discriminate against the indigent in many instances because of the various "point systems." These point systems may allow the wealthy criminal to qualify to get out of jail because the bureaucrat, in his desire to enhance his position through more releases, will spend more time interviewing and getting a rich man out, not taking time to determine if the indigent accused is likely to remain in the community for trial. The pre-trial release programs have been a bonanza for many criminals and criminal attorneys. As an example, in Austin, Texas, a criminal attorney can get a defendant out of jail at night by just showing his bar card and promising to bring him back the next morning for a hearing before the judge. At that time he will get a pre-trial personal recognizance bond for his client. The lawyer charges the criminal defendant for getting him out of jail just as much as it would cost to make a surety bond. Instead, he persuades the judge to give a personal recognizance bond, and *no one has any liability whatsoever on the accused*, certainly a position that any private surety would welcome for private bails! These programs have turned into little more than programs releasing rapists, murderers, robbers, drug addicts and other criminals in the world without the public's knowledge. It is not abnormal to see a judge, on the recommendation of pre-trial release agency, set a $200,000 personal recognizance bond on a defendant with a drug charge even though that defendant has only been in the community for a short period of time. Many times the release is recommended by an attorney who asks for a personal recognizance bond from the judge. Because there is no one properly to monitor the program, and everyone benefits except the victim taxpayer, who's to say anything? It is interesting to note that a convicted supreme court judge in Texas was given a personal recognizance appeal bond. He proceeded to forfeit the bond and go to Grenada, and it took several years before he was captured at the cost of nearly $1,000,000 to the tax-

payers. No one has ever found out if he paid the $5,000 which he agreed to pay when he made the bond.[6]

After years of experience in this field, this writer is not aware of a single instance in which a personal recognizance bond has ever paid off. Therefore, whenever one of these bonds is recommended to the public, it is truly a fraud perpetrated on the public. The bond should be reclassified and no longer considered a bond. Forty percent of the bail made in the United States are made by public bonds. When one considers the tremendous number of personal recognizance bonds given every day in the United States, one can easily understand why taxpayers should be concerned. This is truly a hidden tax imposed on the people by the criminal justice system—some believe it may be in excess of $30 billion a year.[7]

The ten percent deposit plan, designed by a Yale Professor and passed by the United States Congress in 1966,[8] is really a personal recognizance bond in disguise. With this bond, the defendant may post only ten percent of the bond amount. If he shows up for court, he will get his money back. In the federal judiciary and in some states, it is allowed solely at the discretion of the judge. This, at least, leaves the option in the hands of the judge. In states such as Illinois and Kentucky, the judges have had even these options taken away from them. The only option the judge has now in these states is how high to set the bond. The American Bar Association believes that only the judge should have the final discretionary responsibility of the defendant's options of bail. The ten percent plan allegedly helped the indigent and encouraged him to come to court because he would get nearly all of his money back. If he did this, the money then could be used, allegedly, to pay the fine or it could be assigned to his attorney to pay attorney fees. Research in Florida, with an $80,000 governor's investigation and a $100,000 California Legislature Research program, showed that this ten percent deposit program primarily benefited criminals who could quickly pay their way out and never have to return for trial.[9]

The ten percent deposit plan was enforced in California for five years and was thrown out (effective January 1, 1986) as unworkable. The courts in some cases have not even found a way to collect the ten percent when the defendant does not show up, much less the other ninety percent that the criminal promises to pay. During the August 1984 meeting of the American Bar Association in Chicago, Illinois, personal conversations with criminal attorneys included the ten percent plan. During a seminar on how to collect money

from defendants, the attorneys from the "ten percent states" scoffed at the idea that the ten percent deposit would help pay their fee, except on very large bonds. These attorneys were not hesitant to tell other attorneys from other states, "Don't expect the ten percent to help you to collect your fee."[10] If the people show up for court, in practice the cash deposit normally goes for increased fines. It does not help the indigent because the judges have raised the bond in most areas as high as ten times what they were before a ten percent deposit was put into effect. For example, the prostitution bond in California, before the ten percent plan was put in, was $500; after it was put in, it was raised to $5,000. This, in effect, meant a $500 cash bond. The same thing has occurred in DWI, shoplifting, etc. After the ten percent plan goes into effect, the bond is raised ten or fifteen times. Ironically, this has actually caused jail overcrowding because there is no alternative allowed. In states using the ten percent deposit plan, jail population crowding has been most profound.[11] The most distressing problem with the ten percent program is that it is deceptive. There has never been any evidence to show that the 90% not deposited was ever collected from the defendant by the court when the ten percent plan was used. In actuality, it is an automatic reduction of ninety percent to benefit the criminal defendant. This is very deceiving to the taxpayer and certainly circumstances have shown that it only benefits the criminal and sometimes the criminal's advocate. Peace officers everywhere, including the National Sheriff's Association,[12] oppose this type of bond in part because it is most effectively used by the very well financed criminals who want to buy their way out of the criminal justice system.

The private types of bail bonds include, first of all, the full cash bond. This is a much more honest bond than the ten percent deposit bond. It is certainly more truthful to the public. The cash bond program requires the criminal defendant to post cash to guarantee his appearance. The cash bond does an excellent job of paying off. However, its weakness is that it does not help at all in picking the criminal up or tracking him down if he should "skip" to avoid trial. Pursuit, again, is left to the overworked police officer. It is important to remember that the normal pick-up cost on a criminal is about $800 to the taxpayer.[13] This bond also does not provide for the issuance of notices to the accused when he is due in court, therefore resulting in a high bond forfeiture rate. However, if the bond is set high enough, it does pay the government for peace officer's pick-up expenses, as well as judicial expenses, district attorney expenses

and witness expenses. Another weakness is that this bond can be easily forfeited. It will not pay over the stated amount, will not pick the party up, and will not pay for extra court costs. The weakness of this bond is that sometimes the judge will set the bond too low, and therefore expenses cannot be covered; or set it too high with the result that the indigent or poor person cannot get out of jail awaiting trial.

The last type of private bond is the commercial surety bond, which is marketed by the free enterprise crime control bail agent. This originally went into effect around 1907 when the Supreme Court held that such indemnity agreements were not against public policy. A bail surety bond is designed to guarantee performance. In the case of the private bail industry, it is used to guarantee that the surety or its agent will get the criminal defendant to court and to trial on time and, if not, eventually will find him so the criminal defendant can be brought to justice as soon as possible. It is similar to a performance bond. The surety bond has become even more important in the United States as the population has become more transient and people have moved from one place to another to take advantage of new jobs and new opportunities. When people move into a community and have only resided there for a short period of time, they are considered "transient" people. Communities need a guarantee that those transient people who become criminal defendants will not overload the jails in their area. Along with this guarantee, the communities need to be assured that once a criminal defendant is released, he will show up for court.

The commercial bail agent can provide these guarantees by securing the involvement of the defendant's family, if possible, wherever the family is located. In most cases, the family's involvement is an excellent guarantee for the defendant's appearance at trial. The bail agent issues an indemnity agreement and secures collateral from the family. An example would be the following scenario: A $10,000 bond is set by a judge. To secure this bail, the defendant's mother, father, brother, sister, cousin or other friend/relative contacts a commercial surety bail agent. The bail agent would secure proper collateral or indemnity agreements from these parties to guarantee that if the criminal defendant does not go to court he will have these people available to assist in finding him. If the criminal defendant does not go to court, these relatives will pay the surety back for the loss suffered. The surety normally charges ten percent of the value of the bond. Of *that* ten percent, ten percent of the bond goes to

losses, and ninety percent goes to the expenses of tieing up the collateral, going out and recovering the criminal defendant and, hopefully, making a profit.

Sometimes sureties, in order to help unload jails, will secure or "make" certain risky bonds and will take property of any kind as collateral. The property is returned to the defendant or indemnitors when the criminal defendant goes to court and the case is disposed of.

ADVANTAGES OF THE FREE ENTERPRISE BAIL AGENT

The commercial free enterprise bail agent has a tremendous advantage over any other type of bail bond because the free enterprise bail agent can go across state lines to secure or arrest defendants who have escaped, saving the counties and states a great deal of money on extradition. In addition, with the free enterprise incentive program, the surety *only* profits if the defendant goes to court. If the defendant fails to show up for trial, the surety is penalized in one manner or another, either by the court costs or by additional cost to pick the defendant up—or in full payment of a judgment. In theory, the surety should be able to recover from the co-signer, however, in practice the bail agent requires extensive periods of time to recover the liquidation of collateral. Liquidation of collateral is not easy and sometimes the collateral will even evaporate. The reality is that the surety must monitor the person on a weekly basis to make sure he is at the same address he gave. The bail agent must send the criminal defendant his court date, and send the defendant's criminal attorney the court date. The surety must work very closely with other members of the criminal justice system to guarantee the defendant's appearance. In short, the bail agent's position in the criminal justice system is much like that of the offensive lineman on a football team: He does the job, but gets very little acclaim.

The commercial free enterprise bail agent today is normally licensed by state laws. Bail agents have to take license examinations, in some cases go to school, and are very carefully regulated by bail bond boards. A commercial bail agent cannot have a felony against him or a misdemeanor involving moral turpitude.

The free enterprise bail agent has another advantage which benefits taxpayers. He got the defendant out of jail; consequently, he is in a much more objective trust position with the criminal defendant than anyone else in the criminal justice system. There-

fore, he can many times "arrest" a man without a problem due to the fact that the criminal defendant may have to use the bail agent again, as long as the criminal defendant is cooperative and can pay the fee that is required. Free enterprise bail agents all have in their agreements items stating that in the event an accused is arrested for any other type of crime other than traffic violations, he can be surrendered to the courts and lose the premium he paid. This means that the criminal defendant, while on bail under the scrutiny of the free enterprise bail agent, does not want to commit any additional crime because he knows he can be turned in and lose the premium he has put up to the surety.

The trend of recent years throughout the United States has been carefully to select free enterprise bail agents to serve the criminal justice system and to reduce or eliminate the ten percent deposit plan. The ten percent deposit plan has been thrown out of California after five years of use as a drain on the taxpayer which was not getting accused persons to show up for court. The two states relying totally on public bail face substantial problems in effective law enforcement. In Illinois, we hear continual complaints from police officers, sheriffs, and all parties involved saying that the ten percent plan is not working. In Kentucky, the jails are completely overloaded and the direct cost to the taxpayer for their system is as high as $3,400,000.[14]

The commercial surety or the commercial free enterprise bail agent puts the burden strictly on himself as well as the defendant's family and friends to guarantee that he will go to court. Membership requirements for the Professional Bail Agents of the U.S. include a pledge they will *never* give up a chase and will make sure the fugitive is returned to the community.[15] In the Alexander Grant study, commercial bail agents were shown to have a .7% fugitive rate as opposed to a 7.0% fugitive rate for public bail.[16] This means that when a person did jump bond, and truly meant to jump bond, the commercial free enterprise bail agents normally got the jumper back within a period of two or three years, while the personal recognizance bond only got him back eight percent of the time. Many personal recognizance and ten percent research projects show a forfeiture rate as high as sixty-six percent with no one paying off.[17] Figures from surety companies in their profit/loss statements indicate that no more than a two percent failure to appear rate can be allowed or they will go broke.[18] Consequently, the eight percent rate by the public bonds would indicate that certainty of punish-

ment is not in effect whenever these type of bonds exist. A free enterprise bail company could never exist under these circumstances. Victims are entitled to know where the criminal defendant is at all times, to be protected from the criminal defendant, and to be guaranteed the criminal defendant will go to court. The best method devised so far to guarantee this, and other aspects of equity in the pre-trial criminal justice system, is the free enterprise crime control bail agent.

Commercial free enterprise bail agents have proposed a guaranteed misdemeanor jail reduction program and a felony *pro bono* program to help indigents, similar to the assigned risk plan used by automobile insurance companies in the United States today. The problems of fighting crime in America and still protecting our freedoms are difficult to balance, but the pre-trial burden must be shouldered by the criminal, his friends and his family. The greatest danger to the free enterprise crime control bail agents and to the victim taxpayers is public bail (exemplified by personal recognizance bonds and the ten percent deposit bonds) which promotes favoritism and cronyism in the criminal justice system and has foisted a fraud on the public with hidden cost to taxpayers. As previously stated in this work, the cost of each public bail bond has been calculated at $356 per defendant, a cost which is borne by the non-criminal taxpayer/victim.[19] In contrast, the cost of private bail is paid by the accused.

PROBLEMS IN THE FEDERAL SYSTEM: ONE EXTREME OR THE OTHER

The public bail is just another federal CETA type program that has not worked out. The federal system has completely gotten out of control in the area of pre-trial detention. Bail agents supported the 1984 federal crime bill which allows a federal judge to hold a defendant who is dangerous to the community without bond. Under the old federal bail laws, there was no basis for denying bail. The bonds were set by the judges to reflect what the judge felt was necessary to cause the defendant to appear in court. This amount also showed inherent consideration for the defendant's dangerousness to the community. This system did, at least, always allow the defendant a bail bond amount. In several drug cases, unfortunately it allowed dangerous criminal types the right to escape the community's judgment by paying the high bail amount. With the support of pro-

fessional bail agents around the country, the 1984 legislation revised the old bail standards to include likely dangerousness to the community as a basis for *denying* bail. The congressional hearings on the legislation, many of which were attended by this writer, made it very clear that Congress intended bail would be denied in those cases where a released defendant, in a judge's reasonable opinion, would pose actual physical danger to victims, witnesses or other citizens. However, judges and federal magistrates are, to put it mildly, interpreting these provisions in a frightening and inconsistent way. Today, many are concerned that a majority of the people arrested by the federal government are being held without bond. This absolutely violates the Fifth and Eighth Amendments.

In Kansas City, a federal magistrate held a person without bond due to a credit card violation scheme. The pre-trial officer said that the fellow *might* flee which *might* cause him to be some sort of economic danger to the community. There is not one bail bond made where a person *might* not flee. To contend that this economic crime is "dangerous" to the community promotes dictatorship by disallowing the right to reasonable bail.

At totally the other extreme, a magistrate in Houston, Texas, let several suspected drug peddlers out on public bail with *no* guarantees to the public. This was one of the largest drug busts ever made in Harris County.[20] Another federal magistrate allowed an ex-convict out on public bail even though the man's wife pleaded with the magistrate not to let him out as he would kill her. The magistrate still let him out on public bail. The wife was found two days later, dead, in the trunk of a car.[21]

The federal bail system now seems to sanction either one of the two extremes: public bail at great cost to the taxpayer and the victim, or keep the criminal defendant in jail without bail. Federal magistrates would be wise and the country well served if the federal courts would allow no more than four percent of the people arrested detained pre-trial, and let the rest out on private bail based on the amount needed to get the defendant to court, with the *defendant* paying the expense. Under *Blunt v. United States*,[22] a man is entitled to due process of law, but the presumption of innocence starts when the trial begins, and not before.

CONCLUSION

Public bail does not reduce jail population.[23]
Public bail does not reduce public attorney costs.

Public bail does not address indigency.
Public bail does not increase fines.
Public bail may impede the early release of prisoners.
Public bail may reduce the use of private attorneys.[24]

In addition, twice as many crimes may be committed by those criminal defendants out on public bail than those out on private bail.[25]

The bottom line on the effective difference between public bail and private bail can best be explained in the following vignette: In October of 1985, John Burns, President of the Professional Bondsmen of Texas, spoke before a public bail audience, the National Association of Pre-trial Services Agencies in Lexington, Kentucky, and said: "Really, there are very few differences between public bail and private bail. In spite of the fact that I am the only free enterprise bail agent in this room. Let me give you an example. Would all of you please hold up your hand when you agree that you do similar things that I do? How many here interview and get people out of jail? Please hold up your hand." Everyone in the room, including John, raised up their hand. Next question, he asked, "How many here pay for their house notes, their groceries, etc., because of the work that we do?" Everyone in the room held up their hand, including John. He continued, "How many of you go out if the man does not show up for court, find the man, and bring him to court or are personally responsible to pay the bond if it forfeits?" Lo and behold, John was the only one in the room who held up his hand. He looked at the crowd and said, "You see, the only difference is that we are responsible." Then he sat down.

REFERENCES

Public Bail – A National Disaster? by Gerald P. Monks

1. J. Michael Monks, *St. Louis Bail Research Project*, American Criminal Justice Research Institute, October 22, 1982, p. 6. *See also*, J. Michael Monks, *A Study of Bexar County Personal Recognizance (PR) Bonds in 1981: System Abuses and Forfeiture Rate*, American Bail Research Institute, 1981.
2. *Bail, You Be the Judge*, Accredited Surety & Casualty Co., Inc., January 3, 1981, p. 14.
3. J. Michael Monks, *Harris County Pre-trial Services Agency Research Project*, American Bail Research Institute, February 1983, p. 13.
4. Independent Bail Agent's Association of California, *The Bailetter*, December 1985-January 1986, p. 14.
5. Carol B. Kalish, ed., *Bureau of Justice Statistics Bulletin*, U.S. Department of Justice, Bureau of Justice Statistics, May 1981.
6. Glenn Smith, "Marshals Nab Don Yarbrough," Houston *Chronicle*, March 17, 1983.

7. J. M. Monks, *Harris County Pre-trial Services Agency Research Project*, American Bail Research Institute, February 1983, p. 13 Figure of $356 per bond multiplied by an estimated three million bonds made per year plus estimated cost of crime. *See also: Report to the Nation on Crime and Justice*, Bureau of Justice Statistics, October 1983, (Washington, D.C.: U.S. Department of Justice), p. 99.
8. The 1966 Bail Reform Act, 18 U.S.C. 3146 *et seq.*
9. James Austin and Barry Krisberg, dirs., *Bail Reform Act of 1979 (AB2): An Evaluation Report to the California Legislature*, Office of Criminal Justice Planning, September 1983. *See also*, Phil Bronstein, "Bail Jumpers: New State Law Lets Them Make Low-cost Escape," San Francisco *Examiner*, January 30, 1983.
10. *Criminal Lawyer Seminar*, American Bar Association Convention, August 1984, Chicago, Illinois, Hyatt Regency Hotel.
11. Paul E. Dow, "Bail Bonding Reform in Kentucky—Folklore For the Indigent Defendant," *Kentucky Bar Association Journal*, October 1976.
12. *Resolution*, National Sheriff's Association, June 20, 1979, Rochester, Minnesota, Mayo Civic Auditorium.
13. Aric Press, Janet Huck and Elaine Shannon, "The Long FIST of the Law," *Newsweek*, March 26, 1984, p. 58.
14. Mr. Hicks, Treasurer of Kentucky Pre-trial Release Division, Personal Telephone Interview. April 15, 1986. Figure from 1986 budget for Kentucky Pre-trial Release Division.
15. Professional Bail Agents of the United States, Membership Application, National Association office, Houston, Texas.
16. Alexander Grant & Company, *A Report on the Dallas County Pre-trial Release Program*, Professional Bail Agents of the United States, Jail Reduction Committee, October 21, 1983, pp. G-19, G-20.
17. Celes King III and Marvin Byron, *An Analysis of the Impact of AB2 (Berman Bail Reform) Effective January 1, 1981*, July 1982 Los Angeles County.
18. *Best's Key Rating Guide*, A.M. Best Company, Inc., 1985, p. 3.
19. J. Michael Monks, *Harris County Pre-trial Services Agency Research Project*, American Bail Research Institute, February 1983, p. 13.
20. Tom Moran, "Harris County's Largest Drug Bust," Houston *Chronicle*, December 12, 1985.
21. Tom Moran, "Judges Criticized By Missing Mom's Father," Houston *Chronicle*, January 1986.
22. *Blunt v. United States*, 322 A. 2d (1974).
23. "Jail Does Not Have to Reduce Inmate Population, Judge Rules," St. Petersburg *Times*, April 1, 1986.
24. J. M. Monks, *Definitive and Comparative Analysis of the Effects of Public Bail on Jail Reduction, Fines, Public Attorney Costs and Indigents in Harris County, Texas*, Houston, Texas, (American Criminal Justice Research Institute), March 4, 1986.
25. Martin D. Sorin, *Out on Bail*, National Institute of Justice, January 1986, (Washington, D.C.: U.S. Department of Justice).

WHY THE PROFESSIONAL BAIL AGENT HAS SUPERIOR KNOWLEDGE

The professional bail agent has more knowledge and efficiency in pre-trial release and pre-trial crime control than anyone else in the criminal justice system, including peace officers, attorneys or judges. Research, experience, true responsibility and profit are the four conclusive reasons.

Research: Nearly 35 research projects in the illogical criminal justice system have been made by bail agents in the last six years. They have produced startling results. Example: The judges who give the most free public bonds have the most persons in jail. County employees told a jail reduction task force that 2,910 persons were in the jail pre-trial, but primary research by the bail agents disclosed only 1,875 could be released. Failure of research can affect adversely the ability of decision-makers to make good decisions.

Experience: Many of our members have been in the pre-trial bail bond business for 20 to 30 years. All the intelligence in the world will never make up for true pragmatic experience. Ask your parents!

True Responsibility: Many people are responsible by rhetoric. They feel bad if someone does not come to the court, and they are sorry they made a bad decision. We feel bad because we have the true responsibility of paying off the bond forfeiture, sheriff re-arrest costs, and court costs. The buck stops with the bail agent in fact and deed.

Profit: No system in the world has ever been found to be more efficient than the capitalistic profit system. It adjusts promptly to changes and is looking daily to improve efficiency of operation. Profit demands efficiency. The support of good crime control is mandatory for the bail agent to profit.

Daily we see the socialists of the world turning to capitalism and incentives to revitalize their economies. The bail agents' biggest danger is continuing education, recognizing that bureaucrats are tough and socialists are always on the attack against capitalism.

Gerald P. Monks
Executive Director

How can you as a legislature-statesman guarantee Criminals will not be prosecuted? Use personal (uncollectable) bonds recommended by Pre-Trial Release Agencies.

STUDY LINKS BAIL CONDITIONS TO PROSECUTION

A recent article examining prosecuting attorneys' decisions to pursue felony cases following grand jury indictment indicates that defendants released on money bail are *less likely* to have their cases *screened out of the system* than defendants who are released on their own recognizance.

Analyzing data from the Washington, D.C., court system, the author found that financial pretrial release conditions appeared to place defendants in a less favorable position regarding the probability of being "criminalized" through postindictment prosecutorial screening. Thus, it was concluded, "Pretrial release conditions not only affect the likelihood of a guilty plea (Feely, 1979) and the subsequent sentencing decision (Hagan et al., 1980; Lizotte, 1978), but also increase the likelihood that a case will advance through the criminal justice system to the plea and sentencing stages."

The data set used in the analysis - 4,238 felony cases in Superior Court in Washington, D.C., in 1974 - is claimed to be the most complete set of court processing data on prosecutorial screening.

The article, "Criminality, Prosecutorial Screening, and Uncertainty: Toward a Theory of Discretionary Decision Making in Felon Case Processings," by Celeste A. Albonetti, appears in *Criminology*, Volume 24, Number 4, 1986, pp. 623-642.

Prosecutors aren't fools. They know personal (uncollectable) bonds do not show up. Why waste the taxpayers money getting ready to prosecute?

TESTIMONY OF

john a. powell
LEGAL DIRECTOR

ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

THE BAIL REFORM ACT OF 1984

BEFORE

SENATE JUDICIARY COMMITTEE
CONSTITUTIONAL SUBCOMMITTEE

JULY 14, 1989

July 15, 1989

My name is john a. powell. I am the legal director of the American Civil Liberties Union. The ACLU is a nonpartisan, nationwide organization of more than 250,000 members, dedicated to the advancement of individual rights, particularly those guaranteed by the Bill of Rights. I appreciate the opportunity to testify on the Bail Reform Act of 1984.

The Bail Reform Act of 1984 ("the Act") was designed to remedy a number of problems with its predecessor, the Bail Reform Act of 1966. In particular, the 1966 Act did not allow judges to order pretrial detention to protect the safety of the community. Nonetheless, judges imposed de facto preventive detention by setting excessively high bail. A central goal of the 1984 Act was to eliminate this practice; to this end, §3142(c) specifies that a judge "may not impose a financial condition that results in ... pretrial detention." For the first time, Congress authorized pretrial detention of those defendants found to pose a danger to the community. Under the 1984 Act, "dangerous" defendants had notice of the real basis on which they were being detained.1/ Through preventive detention, Congress also sought to address what it viewed as "the growing problem of crimes committed by persons on release."2/

The ACLU opposed the passage of the Act in 1984 for a number

1./ See S. Rep. No. 225, 98th Cong. 1st Sess. 11 (1984).

2./ Id. at 6.

of reasons:3/

-- it stood the presumption of innocence on its head;

-- there was no evidence that adequate techniques existed to accurately predict who was dangerous;

-- there was no evidence that pretrial incarceration actually curbed crime;

-- the definition of dangerous crimes was overbroad;

-- detention hearings did not provide adequate safeguards to protect the rights of the accused; and

-- the "rebuttable presumption" penalized conduct that had already been punished or punished without benefit of trial.

Unfortunately, our subsequent experience with the Act has only increased our earlier concerns. It is not clear that the Act has remedied the problem of excessively high bail, one of its primary purposes.4/ What is clear, however, is that the Act has eroded the presumption of innocence, one of the most basic principles of our criminal justice system.

In considering preventive detention, Congress acknowledged that the due process clause bars the imposition of punishment prior to a determination of guilt.5/ Accordingly, it cast its objectives in regulatory terms: The stated purpose of preventive

---

3./ See Statement of Ira Glasser before the House Subcommittee on Courts, Civil Liberties and the Administration of Justice (May 24, 1984).

4./ See General Accounting Office, Criminal Bail: How Bail Reform is Working in Selected District Courts, (Sept. 1987 Draft), at 21-22.

5./ See S. Rep. No. 225, supra, at 8.

detention was "to curtail reasonably predictable conduct."[6/] The Supreme Court's decision upholding the facial constitutionality of the Act, United States v. Salerno, ___ U.S. ___, 107 S.Ct. 2095 (1987), relies on this "regulatory" objective to conclude that preventive detention was not facially unconstitutional. Whatever the validity of the "regulatory" purpose in the abstract, we believe that the Act has proved punitive in operation. In addition, based on our review of the Act as applied in specific cases, the ACLU believes that it is constitutionally defective in a number of other respects, several of which are set forth below.

I. The Difficulty of Predicting Dangerousness

Both Congress in passing the Act[7/] and the Supreme Court in upholding it[8/], assumed that it is possible to identify with a high degree of certainty those defendants who are dangerous. The results of numerous studies, however, have shown that this assumption is unfounded. Every study to date has shown that neither psychiatrists nor judges can make a prediction of dangerousness with any degree of accuracy. Even with the best techniques available, they are still wrong two-thirds of the

---

6./ S. Rep. No. 225, supra, at 8.

7./ See e.g., S. Rep. No. 225, 98th Cong. 1st Sess. 8-9 (1984).

8./ 107 S.Ct. at 2103.

time.9/

For example, in one study 435 male offenders convicted of violent sex crimes were released from the treatment facility where they had been detained for diagnostic observation. Although the mental health professionals at the facility predicted 49 of the men to be dangerous and opposed their release, after a five year period 65% of them had not engaged in any subsequent dangerous activity. "Thus despite the fact that these men had undergone extensive observation and examinations at the treatment facility, the mental health professionals predicted their potential dangerousness incorrectly 2 out of 3 times."10/ In the case of preventive detention hearings, the decision to detain a particular defendant on the grounds of his supposed dangerousness is made with much less observation and in a much shorter period of time; hence the level of accuracy in predicting dangerousness is probably much lower than one in three. There is thus no way to imprison people based on behavioral predictions except at the price of restricting the liberty of many who are not dangerous and would not commit crimes if released.

An additional problem in trying to predict dangerousness is the fact that only a small percentage of defendants commit crimes while on bail. In a Harvard University study, for example, involving a random sample of 427 persons, only 4 committed

---

9./ Marcella, "When Preventive Detention Is (Still) Unconstitutional: The Invalidity of the Presumption in the 1984 Federal Bail Statute," 61 S. Cal. L. Rev. 1091, 1102 n. 66 (1988).

10./ Id. at 1100-1101.

serious crimes in the first 60 days after they were released. Another study, conducted by the Lazar Institute for the United States Department of Justice, found that only 1.9% of all defendants released before trial are convicted of and imprisoned for serious crimes committed on release. "In order to imprison a significant portion of that 1.9%, a dramatically large percentage of persons who will not commit crime if released would have to be imprisoned as well. Many innocent persons will be locked up in order to deter very few guilty ones."11/

The GAO report indicates that the incidence of crime on bail decreased by a marginal 1% during the course of the study, from 1.8% to 0.8%.12/ This small reduction in the number of rearrests was achieved at a cost of depriving hundreds of defendants of their liberty, often for prolonged periods of time. As one Judge noted:

> The worth of preventive detention cannot be determined only by estimating the number of detained defendants who would have committed crimes if released on bail; consideration must also be given to the number of detained defendants who would not have committed any crimes if released and who are acquitted of the charges for which they are arrested.

United States v. Melendez-Carrion, 790 F.2d 984, 1003 n. 7 (1986) (Opinion of Newman, J.)

Moreover, the BJS reports that the percentage of defendants violating their conditions of release increased from 1983 to

---

11./ Glasser's Statement, supra.

12./ The GAO study compares the number of persons rearrested under the old and new laws, not the number convicted. The study also indicates that few were rearrested for serious crimes.

1985. Another study, conducted by the United States Marshals Service also found that the number of bond default warrants received in 1985 increased by 13% over 1984.[13/] If the Act's reliance on the predictive ability of judges was warranted, one would expect to see a dramatic reduction in these numbers, rather than an increase.

There are also a number of instances where persons detained as dangerous were later acquitted. Not only have these people suffered irreparable harm due to their loss of liberty, but they often experience other types of harm such as loss of employment (which leads to loss of income), dissolution of ties to the community and disruption of family life.[14/] In Washington D.C. a 43 year old man and father of three was found not guilty of murder after spending nearly a year in jail awaiting trial. By the time he returned home to his business and family, his towing company was on the verge of bankruptcy and his home had been lost.[15/] In another case, a Columbus, Ohio man was held for four months before a jury acquitted him of bank robbery charges. During that period his wife left him, taking their two children. "'Who's going to get me back those months?' He now asks

---

13./ The United States Marshals Service First Year Implementation of the Comprehensive Crime Control Act of 1984.

14./ Herman, "United States v. Salerno: The Bail Reform Act is Here to Stay," 38 De Paul L. Rev. 165, 198 (1988).

15./ Walsh, "D.C. Murder Suspects Face Long Pretrial Jailing," Wash. Post, April 4, 1987, p. A1.

bitterly. 'Who's going to get me back my kids?'"[16/] Statistics on the disposition of preventive detention cases need to be collected and analyzed to determine the extent of this problem; whatever their number, such cases reinforce the wisdom of the presumption of innocence and our current inability to predict dangerousness with any degree of reliability.

II. Definitions and Standards for Dangerousness

A particularly disturbing aspect of the Act is the lack of standards as to what constitutes grounds for finding a defendant dangerous. The statute provides that detention shall be ordered when no conditions of release will "reasonably assure the safety of any other person" or the "safety of the community." §3142(e) and (f). The vagueness of these terms means that the statute fails to provide the accused with notice of what he or she has to rebut or establish in order to defend against the charge of jeopardizing the "safety of the community."

It is clear from the legislative history that Congress intended pretrial detention on the basis of dangerousness would apply to only a small group of defendants who pose a substantial risk to the community:[17/]

> There is a small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or other persons. It is

---

16./ New York Times, July 13, 1987, p. A13.

17./ S. Rep. No. 225, supra, at 6-7.

> with respect to this limited group of offenders that the courts must be given the power to deny release pending trial.

As implemented, however, the Act sweeps an exceedingly broad range of offenders within its scope. Preventive detention is sought by the government in a wide range of cases, most of which do not involve well-known defendants or allegations of organized crime.

Detention has been obtained for such run-of-the-mill crimes as production of a false identification document, United States v. Himler, 797 F.2d 156, 159 (3d Cir. 1986); aiding and abetting an unarmed bank robbery, United States v. Winsor, 785 F.2d 755 (9th Cir. 1986); and receipt of child pornography through the mail, United States v. Yeaple, 605 F. Supp. 85 (M.D. Pa. 1985). In the Yeaple case, after two and one-half months in prison, the defendant agreed to plead guilty. The same judge who had found "clear and convincing evidence" that he was a danger to the community sentenced him to probation, and ordered him released. Similarly, press accounts indicate that preventive detention has been ordered for offenses such as possessing five counterfeit $100 bills and credit card fraud.[18/] Clearly, steps must be taken to insure that the law is applied uniformly and in accordance with the legislative intent.

Not surprisingly, the GAO report reflects the wide disparity in standards being used by federal prosecutors in seeking detention: "No standards exist for prosecutors to use in deciding

---

18./ Houston Post, Sept. 4, 1985.

when to seek detention. The prosecutors we interviewed in the four districts each cited different criteria that they used."19/ The vague terminology of the Act needs to be clarified. As John Monahan, national authority on predicting violent behavior, has stated: "one cannot even hope to predict what has not been defined."20/ At a minimum, the "small but identifiable group of particularly dangerous defendants" - - the group to which preventive detention was meant to apply - - must be narrowly and specifically tailored so as not to drag a wide range of defendants into its net.

III. The Use of the "Rebuttable Presumption"

The ACLU has consistently expressed its opposition to the rebuttable presumptions contained in §3142(e). Under the Act, if a person is charged with an offense punishable by ten or more years imprisonment under the Controlled Substances Act, or the Controlled Substances Import and Export Act, or with committing an offense while armed, and if the judge or magistrate finds probable cause to believe that the person committed the offense,21/ "it shall be presumed that no condition or combination of conditions will reasonably assure ... the safety

---

19./ GAO Report at 34.

20./ J. Monahan, Predicting Violent Behavior: An Assessment of Clinical Techniques 58 (1981).

21./ As the courts have interpreted the Act, the judicial officer need not make a finding of probable cause if an indictment has been returned. See e.g., United States v. Dominguez, 783 F.2d 702, 706 n. 7 (7th Cir. 1986).

of the community."

Although the presumption is rebuttable, if a defendant charged with one of the enumerated offenses fails to overcome it, the presumption itself is grounds for detention.22/ Even if the defendant succeeds in rebutting the presumption, it does not disappear. Rather, it continues to be "a factor" to be weighed by the court in deciding whether to order detention. See e.g., United States v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985). Thus the presumption negates the "clear and convincing evidence" requirement of §3142(f) and erodes the fundamental presumption of innocence.

There is simply no rational connection between the established fact -- probable cause to believe a defendant committed a drug offense punishable by more than ten years -- and the presumed fact -- that the defendant poses a danger to the safety of the community in the future. In addition, the category of defendants to which the presumption applies is substantially overinclusive. For example, a person with no prior criminal record who is alleged to have participated, however incidentally, in a marijuana conspiracy is presumed dangerous. See United States v. Walker, No. 86-113M AMT (C.D. Cal. Sept. 23, 1986). "Congress 'intended that the continued drug trafficking constitutes a danger to the community ... But it does not logically follow that all persons charged with drug offenses are

---

22./ In fact, magistrates have found dangerousness solely on the basis of "the presumption." See United States v. Hoyos, No. 86-1269-M-B (C.D. Cal. Sept. 30, 1986).

therefore dangerous. While it is axiomatic that a drug kingpin is a danger to the community, it is not necessarily the case that his couriers or first time dealers are.'"[23/] In order to prevent the detention of such individuals, the rebuttable presumption contained in §3142(e) must be eliminated.

IV. Use of Detention to Coerce Cooperation

No study currently available provides data on the final disposition of cases in which preventive detention was ordered. For this reason, it is difficult to examine the use of detention as a tool to induce a defendant to plead guilty or otherwise cooperate with the prosecution. The potential for such abuse is obvious. For example, both of the defendants in United States v. Salerno were charged in a 29-count indictment alleging fraud, extortion, gambling and conspiracy to commit murder. Both were ordered detained prior to trial on grounds of dangerousness. However, defendant Cafaro was released on bail prior to trial after he agreed to become a government informant.[24/]

Defense attorneys have charged that the law is being used as a tool to gain confessions or cooperation. One attorney stated about his client, "He was a menace to the community until he plead guilty and they (federal prosecutors) didn't have to make

---

23./ Statement of David Reiser before the Senate Subcommittee on the Constitution, Committee of the Judiciary (June 16, 1989).

24./ See 107 S.Ct. at 2106 & nn. 2-3.

their case. Then, bingo, he was out the same day."[25/] Federal public defenders report instances were prosecutors have asked that defendants enter into cooperation agreements in exchange for the government's agreement not to seek detention.

V. Excessive Length of Detention

The ACLU believes that the lack of any meaningful limit on the length of pretrial detention is a serious defect in the Bail Reform Act. While Congress declined to adopt the 60-day limit on detention found in the District of Columbia Statute,[26/] it did so under the assumption that the Speedy Trial Act, 18 U.S.C. §3164(b), which requires that a person detained awaiting trial be tried within 90 days, would provide an effective limit on detention.[27/] Congress' reliance on the Speedy Trial Act has proved to be misplaced.

Section 3164(b)'s 90-day limit is entirely illusory. This is because it is subject to numerous periods of excludable delay. For example, in multi-defendant trials, periods excludable as to one defendant are generally excludable as to all.[28/] Similarly,

---

25./ Philadelphia Inquirer, Nov. 9, 1986, p. 1B.

26./ See D.C. Code, §23-1322(d)(2)(a).

27./ See S. Rep. No. 225, 98th Cong., 1st Sess. 22 n.63. In discussing the provisions of the Bail Reform Act, the Supreme Court's opinion in Salerno states: "[T]he maximum length of pretrial detention is limited by the stringent time limitations of the Speedy Trial Act." Slip op. at 7.

28./ In his dissent in United States v. Salerno, 794 F.2d 64, 79 n.2 (2d Cir. 1986), rev'd 107 S.Ct. 2095 (1987), Judge Feinberg indicated that the protections of the Speedy Trial Act

if a defendant appeals a detention order (or if the government appeals a release order), that period of time is excluded.[29/] As a result, persons are frequently held in detention for periods well in excess of the 90-day limit and it also serves to deter defendants from appealing and rushes them in preparing their defense in order to be released as soon as possible.[30/] For example, in United States v. Melendez-Carrion, 790 F.2d 984 (2d Cir. 1986), cert, dismissed, 107 S.Ct. 562 (1986), eight defendants had been held for eight months at the time the decision was rendered. Although those held solely on the basis of danger to the community were finally ordered released seven months later, see United States v. Gonzales Claudio, 806 F.2d 334 (2d Cir. 1986), others continued to be detained awaiting trial nineteen months after their initial incarceration. See United States v. Melendez-Carrion, 820 F.2d 56 (2d Cir. 1987).

This is far from an isolated example. In United States v. Zannino, 798 F.2d 544 (1st Cir. 1986), the Court of Appeals reversed a district court's order that a defendant who had suffered cardiac arrest be temporarily released. At the time of

---

had not effectively reduced the period of detention in that case: "On June 4, the trial judge apparently set a date shortly after October 1, 1986 for the submission of pretrial motions in this case. Such a leisurely pace in a criminal case involving pretrial detention is difficult to justify."

29./ See e.g., United States v. Leon, 614 F. Supp. 156 (S.D.N.Y. 1985).

30./ Thus, the problem would not be solved by shortening the 90-day limit in §3164(b), so long as there are periods of excludable delay.

the circuit court's decision, the defendant had been detained for sixteen months and had been found by the district court to be physically unable to stand trial. In United States v. Accetturo, 623 F.Supp. 746 (D.N.J. 1985), remanded for further proceedings, 783 F.2d 382 (3d Cir. 1986), the district court noted that "the reality of detention here will mean incarceration of presumptively innocent individuals for approximately ten months." 623 F.Supp. at 762 (emphasis added). Similarly, in the United States v. Jackson, 823 F.2d 4, 7 (2d Cir. 1987), the court noted that "one can reasonably say ... that Jackson's detention may well last more than eight months (emphasis added)."31/

As a final example of the excessive length of pretrial detention, we would direct the Committee's attention to an unreported decision from the Central District of California, United States v. Walker, No, 86-133M AMT (C.D. Cal. Sept. 22, 1986). In a memorandum supplementing its order reversing a magistrate's detention order, the district court addressed the issue of length of detention. Bi-weekly custody reports indicated that

> there are 187 pretrial detainees in this district. Of that number, 51, or 27 percent, have been in custody for 70 days .... Of the 51, 80 percent (41 detainees) have been in pretrial custody for more than six months, including two who have been in pretrial detention for nearly one year. Thus, it cannot realistically be contended that the Speedy Trial Act works evenly to insure that pretrial detention will be of such a short

---

31./ See also United States v. Frisone, 795 F.2d 1 (2d Cir. 1986) (twelve months); United States v. LoFranco, 620 F. Supp. 1324 (N.D.N.Y. 1985), appeal dismissed sub nom. United States v. Cheeseman, 783 F.2d 38 (2d Cir. 1986).

duration so as not to constitute punishment. On appeal, the Ninth Circuit reinstated the detention order, concluding that the Bail Reform Act was constitutional. United States v. Walker, 808 F.2d 1309 (9th Cir. 1986). It did not address the districts court's findings regarding length of detention in the district.

A 1988 Report published by the Bureau of Justice Statistics addresses the question of length of detention. The report indicates that the average length of detention in 1985 was 53 days, or almost two months. Unfortunately, the sample is skewed because it excluded cases which had not reached final disposition within twelve months of initiation -- in other words, it excluded cases involving the longest periods of detention. Data from 1983, prior to the enactment of the Bail Reform Act, indicates that this amounts to 28% of the cases handled. This figure (53 days) is also misleading in that the problem with preventive detention is not the average length of detention, but the standard deviation from the average. For example, there is a big difference if all detainees were locked up for 53 days or if one-half were locked up for one day while the other half were detained for 105 days, yet the average in both scenarios would be the same. Thus, by stating only the average length of detention, the report fails to show whether some people are being held too long.

To date, only the Second Circuit has held that prolonged pretrial detention on the basis of dangerousness is

unconstitutional per se. See United States v. Melendez-Carrion, 790 F.2d 984, 998-04 (2d Cir. 1986) (Opinion of Newman, J..), cert dismissed, 107 S.Ct. 562 (1986). Since Salerno did not decide this particular issue, the holding in Melendez-Carrion (although not Judge Newman's reasoning) survives Salerno. Other circuits have held that while prolonged detention is not unconstitutional per se, it may be in certain cases. For example, in United States v. Theron, 782 F.2d 1510, 1516 (10th Cir. 1986), after the defendant had been held for four months, the 10th Circuit stated that "at some point a pretrial detainee denied bail must be tried or released. Although pretrial detention is permissible when it serves a regulatory rather than a punitive purpose, we believe that valid pretrial detention assumes a punitive character when it is prolonged significantly."[32/] In United States v. Ojeda Rios, 846 F.2d 167 (2d Cir. 1988), the defendant was detained without bail on the basis of dangerousness and risk of flight. The defendant was finally ordered released by the Court of Appeals after 32 months because the trial was still months away and "due process could not tolerate further pretrial detention."[33/] Although these cases show that pretrial detention may be ruled unconstitutional on a case by case basis, they do not establish a definite standard as to when a detention has become abusive; hence a defendant does not know when he may successfully challenge his

---

32./ Herman, supra, at 176.

33./ United States v. Ojeda Rios, 846 F.2d 167, 169 (1988).

imprisonment. In still other circuits, however, courts have not found that prolonged detention on the basis of danger to the community violates a defendant's substantive due process rights. See e.g., United States v. Zannino, 798 F.2d 544 (1st Cir. 1986); United States v. Accetturo, 783 F.2d 382 (3rd Cir. 1986). Moreover, even the Second Circuit has upheld prolonged detention for risk of flight. See United States v. Melendez-Carrion, 820 F.2d 56 (2d Cir. 1987).

As a result of these conflicting decisions, "dangerous" defendants can be detained for substantially longer periods in Boston that in Connecticut. Connecticut defendants who are flight risks can be detained longer than their co-defendants who allegedly pose a danger to the community. Such bizarre distinctions should not be tolerated. The ACLU urges Congress to remedy the situation by adopting a limit on the period of pretrial detention itself, such as the 60-day limit contained in the D.C. Statute.

VI. Procedural Abuses

The legislative history of the Bail Reform Act reflects Congress' concern for procedural safeguards. For example, the Senate Report states:

> [T]he Committee recognizes a pretrial detention statute may nonetheless be constitutionally defective if it fails to provide adequate procedural safeguards or if it does not limit pretrial detention to cases in which it is necessary to serve the societal interests it is designed to protect. The pretrial detention provisions of this section have been carefully drafted with these concerns in mind.

S. Rep. No. 225, 98th Cong., 1st Sess. 8 (1984). The Supreme Court's decision also relies on these procedural safeguards. In upholding the Act's procedures against a facial challenge, the Supreme Court in Salerno noted that "we need only find them 'adequate to authorize the pretrial detention of at least some [persons] charged with crimes,' ... whether or not they might be insufficient in some particular circumstances. We think they pass that test." 107 S.Ct. at 2103.

The Act does contain certain procedural protections: It grants detainees the right to counsel at the detention hearing, the right to testify on their own behalf, to present information by proffer or otherwise, and to cross-examine witnesses who appear at the hearing. §3132(f). The Act provides that the judicial officer make his or her decision on the basis of statutorily enumerated factors, §3142(g), and must include written findings of fact and a written statement of reasons for the decision to detain. §3142(i). As with the length of detention and the breadth of application, Congress' expectation of procedural fairness has not been realized. The procedures currently used to detain hundreds of individuals for months at a time are woefully inadequate.

To begin with, no special standard governs the issue of whether the accused committed the offense for which he may be detained. Determination at the preliminary hearing that probable cause exists to arrest the person for the crime charged, is sufficient, under the Act, to answer the question of whether he

should be detained. Since the probable cause standard was developed to justify only an arrest, the ACLU believes a higher standard is necessary to justify the preventive detention of persons not yet proven guilty. An accused threatened with prolonged pretrial detention possesses a substantial liberty interest which cannot be overcome by a mere showing of probable cause. The Constitution requires, at the very least, proof of clear and convincing evidence and that no condition of release, such as house arrest, will reasonably assure the safety of others.34/

Secondly, not all detainees are advised of the grounds on which the government is seeking to detain them, namely, whether the government requests detention on the basis of danger to the community or risk of flight or both. Since the evidence to oppose a request for detention on each of the statutory grounds is different, lack of notice severely hampers the ability to oppose a request for detention. In United States v. Melendez-Carrion, supra, the government claimed that the statute did not require it to specify the grounds on which detention was sought. Alternatively, in a response that typifies the government's approach in many of these cases, it claimed that imposition of such a requirement "might well result in the government's simply declaring in every case that detention is warranted on both grounds." 790 F.2d at 993. Although the Court of Appeals found that notice was required, it dismissed that lack of notice in the

---

34./ Glasser's Testimony, supra.

case before it as harmless error. Id. at 993-94.

The GAO study of the impact of the Bail Reform Act contains an account of a particularly shocking procedural lapse occurring in one of the four districts surveyed: researchers found that 26% of the persons detained in the Eastern District of New York were detained without any detention hearing at all.[35/] The report also indicates that even when hearings are held in the Eastern District they commonly lasted ten minutes or less.[36/]

Other sources confirm our impression that such perfunctory procedures are widespread. The case law indicates that reliance on proffers and hearsay is commonplace. See e.g., United States v. Delker, 757 F.2d 1390, 1396 (3d Cir. 1985) ("discretion lies with the district court to accept evidence by live testimony or proffer"). Far from becoming "mini-trials," as Congress feared, decisions to incarcerate are made quickly, in a pro forma manner, and often on the basis of a proffer of very limited facts, without any live testimony at all.

For example, at the detention hearing in United States v. Martir, 782 F.2d 1141 (2d Cir. 1986), the government offered no independent evidence, nor did it furnish testimony or even an affidavit to describe in any detail the forthcoming trial testimony of its witnesses. Rather, the attorney for the government "simply stated in the most general and conclusory terms what it hoped to prove at trial." Id. at 1147. Although

---

35./ GAO Report at 16.

36./ Id. at __.

critical of this practice, the Court of Appeals affirmed the detention order, relying on the fact that Martir had not challenged the proffer. How a defendant was supposed to challenge "general and conclusory" statements by the government's attorney, the court did not say.[37/] See also United States v. Winsor, 785 F.2d 755 (9th Cir. 1986) (detention on the basis of government proffer).

An analysis of the statute prepared by the Justice Department encourages this practice, noting (somewhat inaccurately)[38/] that "the government may proceed by hearsay, or even by proffer, as the statute expressly provides, without offending due process."[39/] The use of proffers and hearsay evidence effectively precludes application of some of the Act's procedural safeguards, particularly the right to cross-examination.

Equally disturbing is the government's practice of relying on sealed materials and in camera testimony to detain someone

---

37./ Similarly, in the Walker case referred to above, the government asserted that pretrial detention of one defendant was warranted because he had committed other bank robberies. The government did not present this allegation through testimony but instead did so through a proffer by its attorney. As a result of this process, the defendant was deprived of the ability to test the reliability of the allegation that he had committed such acts.

38./ Section 3142(f) appears to permit the use of hearsay; it provides that "[t]he rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing." The section does not provide any authority for the government (as opposed to the defendant) to proceed by proffer.

39./ U.S. Dept. of Justice (Executive Office for the United States), Analysis of the Constitutionality of Pretrial Detention.

awaiting trial. Obviously, use of evidence to which the defendant has no access and testimony which he or she cannot rebut or cross-examine renders these procedural safeguards meaningless. In United States v. Angiulo, 755 F.2d 969, 974 (1st Cir. 1985), for example, both the district court and the court of appeals relied on sealed materials. Subsequently, in United States v. Acevedo-Ramos, 755 F.2d 203, 209 (1st Cir. 1985), the court of appeals expressly sanctioned the use of in camera testimony in certain circumstances. In United States v. Leon, 766 F.2d 77, 81 n.3 (2d Cir. 1985), the Second Circuit disapproved of the use of in camera testimony relating to information obtained by informants -- "which the government concedes violates the defendant's right to cross-examine witnesses" -- but, based on the court's review of a sealed transcript, it decided that "nothing of consequence was revealed that was not disclosed also in open court."

The statute requires judicial officers to "include written findings of fact and a written statement of reasons for the detention." §3142(i). However, magistrates and district courts often issue perfunctory detention orders which fail adequately to set forth the basis for detention. The one-sentence detention order at issue in Martir, for example, states only that "the court is unconvinced that defendant's attendance in state court rebuts the [§3142(e)] presumption." 782 F.2d at 1146.

Meaningful appellate review of such an order is impossible.[40/] See also United States v. Jackson, 823 F.2d 4, 6 (2d Cir. 1987) ("rather than making explicit findings of fact," the district court cited the statutory presumption, statements by Jackson's mother to government agents and "all the other factors").

The magistrate's detention order in Walker, supra, is even more disturbing. The order of detention for three defendants consisted only of a completed form, denominated "CR 94, 5/86," which tracks the language of the Act and provides spaces for checkmarks to indicate that the magistrate has fulfilled his or her responsibilities. The form provides only four and one-half lines for a statement of the reasons why the "defendant poses a risk to the safety of other persons or the community." In Walker, the "written findings of fact" required by §3142(i), consisted of six words for Robert Walker, six words for Duon Walker, and thirteen words for Santiago Cortes Rivas. In another case from the same district, United States v. Hoyos, No. 86-1269-H-B (C.D. Cal. Sept. 30, 1986), the magistrate used the same form to order the defendant detained on grounds of dangerousness simply by writing the words "the presumption" in the blank space on the form. Use of such forms appears to be commonplace. See United States v. Kouyoumdjian, 601 F. Supp. 1506, 1507 (C.D. Cal.

40./ The court of appeal's observation that "the judge should have stated the basis for the order of detention more clearly and should have made more detailed findings in light of the major liberty interest at stake," like its characterization of the order as "brief" is quite an understatement. 782 F.2d at 1146.

1985).

The General Accounting Office report on the impact of the implementation of the Bail Reform Act supports our impression that judicial officers are not complying with the requirements of §3142(i). Table 2.2, a breakdown of the reasons for detention, contains a significant category of defendants -- 11% -- for which the GAO "can't determine" the reasons for detention.

VII. Recommendations

The ACLU continues to urge Congress to repeal those provisions of the Act that authorize detention on the basis of danger to the community. In the alternative, we strongly recommend that the Congress strengthen the Act's procedural safeguards, impose a meaningful limit on the length of detention, and narrow the class of defendants subject to "preventive detention." We set out below some specific suggestions:

(1) Narrow the offenses for which detention on the basis of danger to the community can be ordered. Congress should amend §3142(f)(1) to include only serious crimes involving physical violence, which should be enumerated. If the government intends to rely on prior convictions, it should be required to give the defendant written notice of these charges.

(2) The Presumptions contained in §3142(e) should be eliminated.

(3) Detention orders must be based on evidence other than proffered or in camera testimony. The government should be

compelled to use live testimony, thereby allowing the defendant to exercise the right of cross-examination granted elsewhere in the Act.

(4) If the government intends to rely on prior convictions, it must produce documentary evidence of prior convictions. Arrest without a disposition that supports guilt should not be admissible in the detention hearing.

(5) In order to detain a defendant prior to trial, the government should have to prove by clear and convincing evidence, rather than by probable cause, that the defendant committed the offense for which he is charged.

(6) In order to detain someone on the basis of danger to the community, the court should be required to make specific findings of fact based on the evidence presented at the hearing. The court should have to make a separate finding that the defendant is dangerous within the meaning of the statute and that there are no less restrictive means of protecting the safety of the community, such as house arrest, available. These written findings of fact and conclusions must be sufficiently detailed to provide notice as to the basis of detention and to assure meaningful appellate review; at a minimum, the detention order must discuss all of the factors listed in subsection (g), as well as the alternatives to incarceration which were considered and why they were rejected. Orders that simply track the language to the statute should be presumptively inadequate.

(7) If a defendant is incarcerated prior to trial, the

length of detention should be limited to a fixed period of time. The Speedy Trial Act, 18 U.S.C. §3161 et seq., is not an effective limit on pretrial detention.

(8) Finally, the statute should require that the compilation of relevant data, including the number of persons currently in preventive detention, the length of time in detention, and the dispositions of their cases. This information should be submitted to Congress and made available to the public.

Conclusion

In order to operate in the manner intended by Congress and relied on by the Supreme Court in Salerno, the Act requires significant changes. The problems identified in my testimony are based on a review of numerous cases decided under the Act, as well as the report complied by the GAO. Even on this incomplete record, there is great cause for alarm. We urge the Congress to continue its investigation of how the Act is being applied and to adopt the necessary safeguards to see that it functions in a manner consistent with the principles on which our system of justice is grounded, including the presumption of innocence.

We respectfully request leave to supplement this written testimony.